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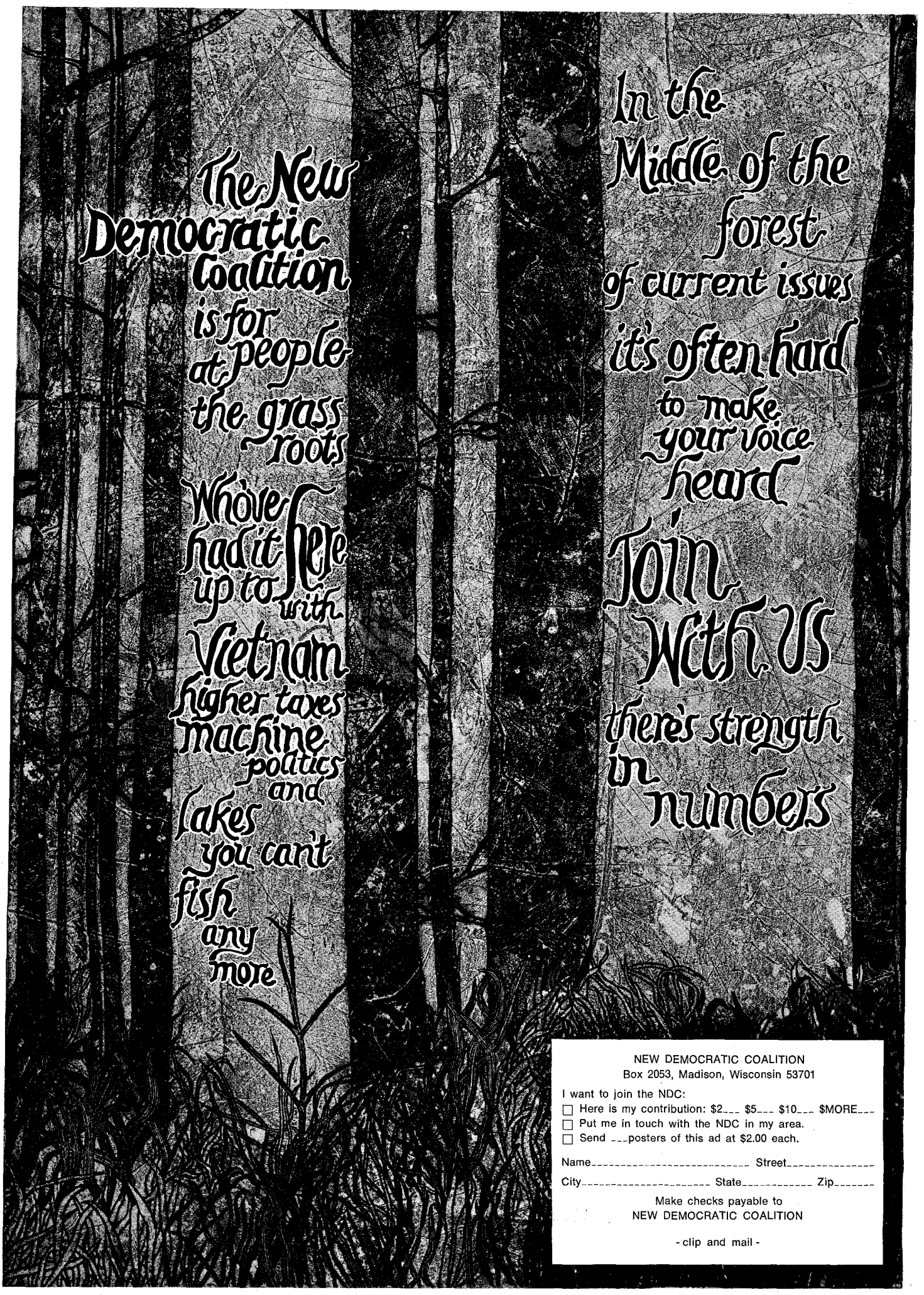
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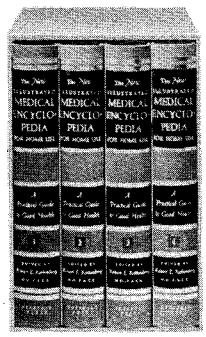

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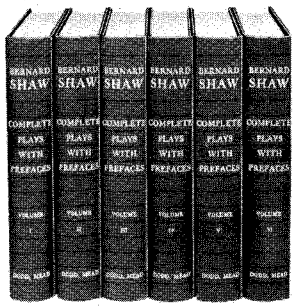

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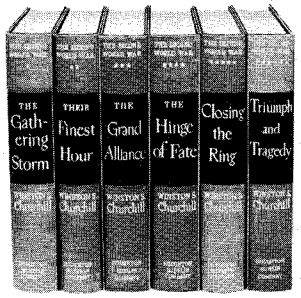

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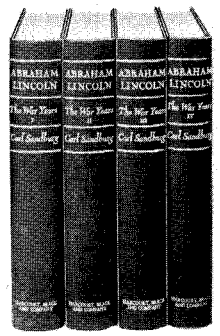

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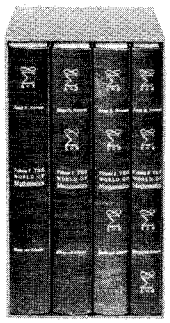

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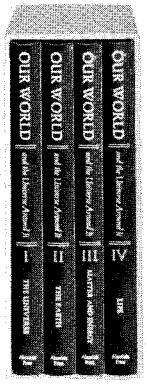

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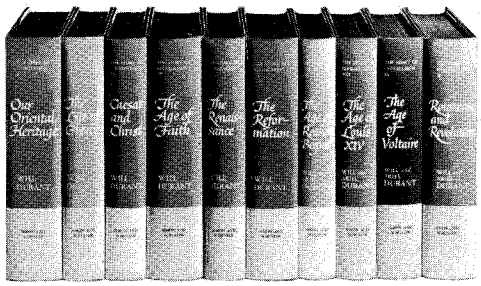

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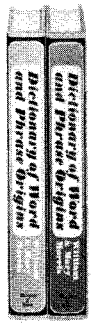

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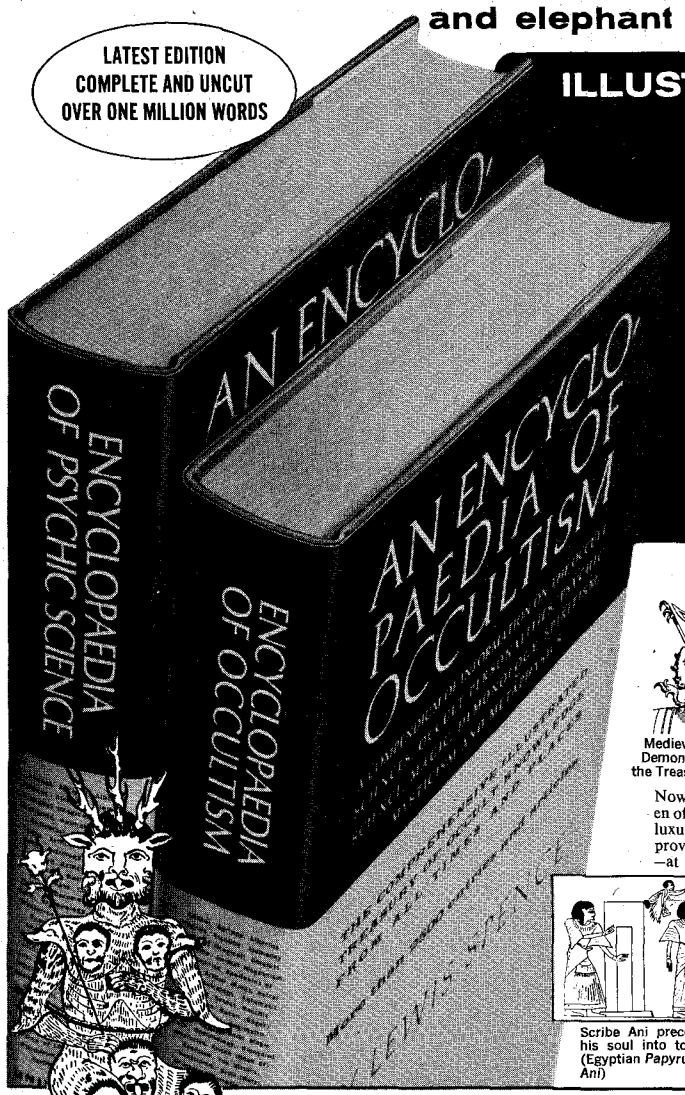

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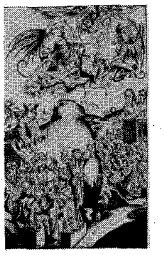
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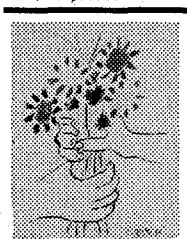

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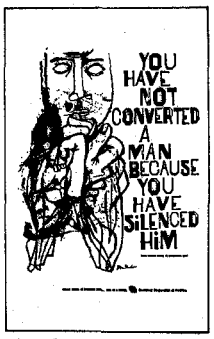

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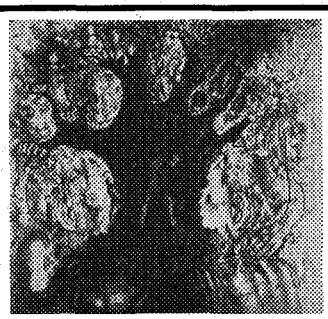

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Unanimous

Sometimes you feel that there's more in Washington than you can cover – even without Vietnam, moonshots and Spiro Agnew.

Here you are, for instance, in an alcove of the tremendous Supreme Court chamber with magnificent rose marble columns, and eight black-robed justices behind their bench. You look through a parting of red velour drapes going up 30 or 40 feet and it is like looking through the entrance of a tent.

It is quiet here but there is passion – a vibration, a resonance – in the voices of the rival counsel arguing whether 30 recalcitrant Mississippi school districts must immediately abolish all-Negro schools. Simple enough it sounds. But for two hours the big audience hardly stirs. For this is a matter of symbols and, maybe, terminations.

Fifteen years ago this court ordered American schools desegregated with "all deliberate speed" and they are still segregated, many of them. Has the time come to eliminate "deliberate"?

Here is another symbol. Mr. Chief Justice Burger sits there, massive, impressive, asking quiet questions; in his first great test, will he break with the President who named him? There has been near unanimity in this august Court in the past on school cases.

Here is another symbol, an extraordinary one: sitting with white-haired segregationist lobbyist Satterfield, who waves an arthritic finger, and Mississippi's Attorney General Summer, is a third lawyer – Jerris Leonard, chief of the Justice Department's Civil Rights Division. He is asking for delay, too, and has a mutiny back home among his staff lawyers. It is an astounding partnership; the first time in 15 years an Administration has joined the white segregationist South. It was engineered by Mr. Nixon and Attorney General Mitchell as part of the Southern Strategy. Judge Haynsworth is part, too.

Opposing them is Jack Greenberg, NAACP lawyer for the Negro plaintiffs. No doubt about the feeling in his voice. No doubt, either, where wispy, 83-year-old Justice Black stands; when Leonard pleads not to be "precipitous" Black snorts, "Would anything be precipitous after all these years?"

The Court rises, departs – in black robes through curtained exits. What have we seen? Nobody can say. But it is one of the great shows in America. It is the quiet, as Holmes said, of the center of the cyclone.

So now it is Wednesday, six days later. It is 5:56 p.m. The bell rings on the AP ticker. It has been printing a minor story about food stamps. "Bust this" it says suddenly. Then – BULLETIN – "The Supreme Court ordered tonight the immediate desegregation of Mississippi public schools." Yes, *unanimous*! Somebody comes running down the hall. "Wait till Spiro hears about this," he cries. It was Mitchell who pushed Mr. Nixon into this stinging defeat. As for the Chief Justice, we doubt if he is any less conservative than we first thought him. But maybe there will be "Impeach Warren Burger" signs yet.

Leadership

Now we are over at the Statler Hilton at a typical Washington press conference – coffee and sweet rolls in back, Urban Coalition chairman John Gardner and Roger Egeberg, HEW health spokesman, up front. They are here to unveil a new drive for health care. Both men avoid the phrase "national compulsory health insurance" as a college of cardinals would avoid "birth control." Yet reporters are inexorable. One asks if it isn't true that half the hospitals in big cities would close if their supply of immigrant interns was cut off. Dr. Egeberg rises with apparent embarrassment, pauses, says the single word "Yes," and sits. (Question: Can a situation of such startling dependence be met adequately with a monosyllable? But what official wants to tangle with the restrictive American Medical Association?) A minute later Dr. Egeberg says (perhaps indiscreetly) that he believes growing pressure for universal health insurance will prove irresistible – perhaps in as little as four or five years. Fade out. . .

This time it's just newsmen sitting around reading a headline in the *Wall Street Journal*: "US Steel Net/Spurted 41.6%/In 3rd Period." The Old Timer ruminates. Why, it was just last July that US Steel raised prices an average of 4.8 percent – that was its contribution to the inflation spiral. Back in April, 1962, he reminisces, when US Steel raised prices Jack Kennedy hit the roof. His reaction made the biggest news of the next 72 hours. And Steel rescinded its raise.

Here in July, 1969, when US Steel put in its boost you could have heard a pin drop in the directors' suites across the country – what would Mr. Nixon do? He was fighting inflation; slamming on the brakes; guaranteeing loss of jobs and probably an ultimate business slowdown. Do? He didn't do anything. Jawboning was out.

The *Wall Street Journal* explained about Steel's big profits: "The earnings also benefited to some extent from the major price increases that US Steel initiated and competitors followed early in August this year," it noted casually.

The scene shifts again. It's a lunch gathering. The chairman introduces economist Walter Heller as "a kind of Art Buchwald of the creamed chicken circuit." Sprightly Heller gets off that one about an economist – "he's a man who would marry Elizabeth Taylor (pause) for her money." Laughter. Then he grows grave. Congress is gutting the tax reform bill, he announces. He implores the White House to take a stand. He sees "a pell-mell rush away from tax reform."

Congress, Heller says, is "essentially an instrument of negotiation and compromise." Not leadership. The only place where leadership resides, he says, is in the White House. Tax reform represents elemental equity. "I can't emphasize enough what's at stake here," he says. He repeats the word "leadership," helplessly. Then he shrugs. . . .

Washington is like that. The other night we went out and our next door neighbor's house was on fire: yes, real flames pouring out upstairs. We sent the alarm and got into the house. It was a beautiful room. Orientals on the floor. It was the strangest sensation we ever had; eerily calm in there, save for the crackling upstairs. . . . America is affluent, too, and sometimes we think we hear, well, you know what.

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After 25 Years

Somewhere under all that brushwood is a real Europe, but a quarter century of bitter division, suspicion and national rivalry makes it hard to find. Top marks, then, to West Germany's Willy Brandt, who begins his chancellorship by cutting out some of the undergrowth. His time in office could see the real Europe at last begin to emerge, having taken literally a line from Mr. Nixon's inaugural address: "After a period of confrontation, we are entering a period of negotiation." What Brandt is aiming to do is to close the Second World War, which means mutual thinning out of American and Russian troops, and the evolution of a European security system. That cannot happen without the concurrence of the Soviet Union and this country, and it remains to be seen, too, whether Eastern Europe, including East Germany, will permit it to develop. The keystone of Brandt's grand design is a summit conference of the belligerent powers that fought, won and lost a war, 25 years ago.

Brandt's immediate problem is East Germany, as it has been with every chancellor since the war's end. The Chancellor's approach to the problem of a divided nation, in his first foreign policy statement, was low-key. In the new Bundestag he has slim control, only a dozen votes; some far from reliable political allies; and an opposition front bench that is filled with Christian Democrats, furious at losing their first election. Though he was cautious, Brandt nonetheless challenged a cherished traditional German view. For years, it has been part of the Bonn credo that there cannot be "two Germanies," in international law. The celebrated Hallstein Doctrine threatened diplomatic reprisals against third countries that recognize East Germany. In fact the Hallstein Doctrine has long been a dead letter. Brandt said as much; Germans do live in separate states. He added however that Germans can't be "foreign to each other," and that if there are two German states, there is only one German nation (a statement the East German regime will find it difficult to contradict). Brandt thereby flashed a green, or at least an amber light to countries like India which now will probably give East Germany their diplomatic nod, thereby acknowledging reality. The acknowledgment will save some NATO countries the trouble of tiptoeing into East Germany's annual Leipzig Fair and pretending officially that they're not there. It was absurd for Bonn to insist for so long that East Germany didn't exist, when Bonn

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has been trading with East Germany and has a customs union with it.

Though East Germany had done business mostly with the Soviet Union, it is seeking to expand sales to the West, to buy sophisticated industrial equipment it cannot get from Russia. The question is, will Brandt's new, more flexible and hospitable approach help bring down the wretched Wall? Not since Christmas 1965 have West Berliners been permitted to visit the East, save to attend family funerals and baptisms, for which they need permits from the East's "Bureau for Exceptional Cases." The regime of aged Communist boss Walter Ulbricht may be hard to soften. At least Brandt has begun to try, despite stinging attacks by the Christian Democrats and an accusation last week by the former chancellor, Mr. Kiesinger, that Brandt's policy would lead to "the landslide we have tried together to hold back for 20 years."

The new West German chancellor has also implied acceptance of Poland's existing borders, and has offered a nonaggression pact. He evidently would like a package deal: Bonn's confirmation of Poland's present Oder-Neisse frontier in an all-European settlement that would end World War II and, hopefully, reunite Germany. Unfortunately for this concept, few in Eastern Europe, including the Poles, Communists or non-Communists, can work up much enthusiasm for a reunited Germany. Memories are still too vivid. But Eastern (also Western) Europeans do want to keep German fingers off any European nuclear trigger; they therefore should welcome Brandt's intention to sign the nuclear nonproliferation treaty. Once that is done, a next step might well be an attempt to create a nuclear-free zone in central Europe, to include both Germanies. Brandt spoke favorably of holding a European security conference, which the Finns were the first to propose. His endorsement of the proposal is well-timed, since the Americans and Russians are meeting in Helsinki to discuss halting their strategic arms race.

Europe won't be made secure overnight by one speech, or by Brandt's new conciliatory approach alone. Hitherto, the West Germans have feared, or professed to fear, a Soviet-American deal in Europe, over their heads and perhaps at their expense. On our side, the government has occasionally professed apprehension that Bonn will succumb to some Moscow lure. Brandt is more confident. Relations between his country and the US, he says, "are strong enough to allow for a more independent German policy within a more active partnership." European initiatives for improving East-West relations should be huzzaed by Washington; if they succeed, they make it that much easier to safely reduce American troop strength in Europe; if they don't, nothing will have been done to loosen the ties that bind Bonn to its Western friends. Germany's first Social Democratic chancellor in 40 years is off to a brave start.

Who's Up, Who's Down?

To get a clear, simple picture of what is happening in Vietnam, it is advisable to read one newspaper only on any given day; variety scrambles the mind. How it scrambles the mind is illustrated by dispatches appearing on October 29, in three leading newspapers.

The Washington Post's Robert G. Kaiser reported from South Vietnam that, "just when anti-war pressure in the United States seems to be escalating sharply, many American officials here are contemplating the tantalizing possibility that the Vietcong's revolution in South Vietnam has been defeated." But James P. Sterba of *The New York Times* reported from Saigon that, "military analysts here are accumulating evidence that North Vietnamese and Vietcong forces are planning still further intensification [of the fighting] in mid-November. . . . Enemy weapons and food caches have been found in increasing numbers in the last two weeks." And John E. Woodruff of *The Baltimore Sun*, also in Saigon, reported that, "the latest American evaluation of South Vietnamese fighting ability rates the combat effectiveness of government troops in the second quarter of 1969 as slightly lower than it was in the same period a year ago. . . . The South Vietnamese seventh division became persistently less effective in combat during each of the three quarters preceding the time when it was assigned to replace troops of the ninth American division as they left Kien Hoa and Dina Tuong province in the Mekong delta."

The Mekong delta? Wrote Mr. Kaiser: "The countryside is more fully 'pacified' than at any time since the big-unit war began in 1965. . . . All over the delta one hears that 'time is now on our side.' It is widely assumed that each week the Vietcong get weaker and the government presence becomes stronger." But the *Sun's* correspondent wrote: "The official unpublished American view of the three divisions now operating in the Mekong delta is that all are below the national average in combat effectiveness. . . . One of the recurring themes in the official American view is frequent references to reports that Vietnamese troops 'lack aggressiveness' when actually facing the enemy in combat." What of Longan Province? Said Kaiser: "This hamlet of Appac in Longan Province is a good example of the new model [of successful pacification]. . . . According to the toothless old monk in the pagoda, Thien Loi, all the Vietcong officials in the area have been killed, arrested, have rallied to the government or have 'gone away.' . . . North Vietnamese soldiers are in hiding, in groups of six to a dozen, in Longan Province and there are still occasional incidents nearby. But the new optimists in this part of Vietnam cannot see how the Vietcong can regain the predominant position they once held." Mr. Sterba in the *Times*: "In this area so far this month, military officials said they have detected

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the infiltration of one 400-man unit. . . . Total enemy strength in the area has remained consistent over the last several months at slightly over 60,000 men, they said."

And on that same day, front page, John Hughes of the *Christian Science Monitor* added the news that "a new note of vigor has been injected into Sino-North Vietnamese relations. A top-flight North Vietnamese delegation, led by Premier Pham Van Dong himself, has paid its second visit to the Chinese capital within a month. China and North Vietnam have signed a new economic and military aid agreement for 1970, in which the Chinese are believed to have increased substantially their assistance for the coming year."

Pay a dime and take your pick.

A Little Less Illegal

HEW's doctors prevailed over Justice Department tough guys in shaping the President's new drug reform proposals. Simple possession of illicit drugs, if Mr. Nixon has his way, will become a misdemeanor, penalties will accordingly be reduced to a maximum year in jail and $5000 fine. The big guns will be turned away from users and toward those who supply drugs. It is a cut and paste compromise that makes young, middle-class pot smokers a little less illegal.

Since sons and daughters of prominent persons – including senators – started getting busted for crimes previously associated with lower-class blacks, compassion for marijuana criminals was sure to arise. But Mr. Nixon's drug bill may not be much of a favor even to them. The current federal law provides for mandatory two-to-ten year sentences for first offense possession, five-to-twenty years for a second offense. The harshness of these penalties has resulted in many arrested youths never being brought to trial, or if tried not sentenced. Prosecutors and judges may, under the Nixon scheme, be more inclined to lay upon offenders the full force of the law; more youngsters, rather than fewer, may land in prison.

The Administration's new proposals go down very hard on those who possess drugs (including, inappropriately, marijuana) with the intent to sell; it would be a felony – five years and a $5000 fine. Most young pot smokers do not buy from the Mafia, they buy from one another, or pass it around free. The bill does not comprehend the social nature of marijuana use or reflect current knowledge of its hazards, which many experts consider minimal. It is barbarous to put a man – even a Mafioso – in jail for five years for selling a substance that may or may not be benign. Dr. Roger Egeberg, the Assistant Secretary of HEW who is to be thanked for influencing the Administration to tone down the penalty in any degree, thinks marijuana will one day be legal as alcohol. The basis for that "inevitability" will necessarily be a wider understanding, now absent, of its effects.

The Bureau of Narcotics and Dangerous Drugs has given its support to Senator Dodd's proposal to establish a commission to study marijuana, specifically the extent of use; the efficacy of present laws; the immediate and long term effects on the physiology and psychology of the user; the relationship, if any, between smoking and criminal and aggressive acts; and the relationship between marijuana and other drug use. The commission would do its work in a year and issue, presumably, a report that would allow *rational* legislation, perhaps even repeal of marijuana laws. Such commissions, as John Ingersoll, director of the Narcotics Bureau, admits, may be employed as "a palliative; a means of sidestepping the issue." But this one is essential. It just might conclude that Margaret Mead was right, when she told a congressional committee on the fiftieth anniversary of Prohibition that laws against marijuana use do more damage to users and society than does marijuana itself.

Murphy's Late Show

A few days before the Senate was to consider a two-year extension of the Economic Opportunity Act, California's senior senator, Republican George Murphy, met with OEO's legislative liaison people and told them he wanted to amend the act. They got the impression, said a Senate aide, that "he didn't know what he wanted to do, and that there probably wouldn't be any amendment." The following Tuesday, October 14, Murphy introduced a proposal to allow governors veto power over any part of OEO's Legal Services Program in their states, without explanation. Under the present act a governor must veto an entire program or let it pass, and the OEO Director can override the veto. (Murphy would eliminate the Director's veto.)

Sen. Walter Mondale (D, Minn.) alone tried to start debate on the amendment (which no one had seen; it had been drafted only the night before). But the OEO group was not in sight. Legal services director Terry Lenzner had been told that Murphy would be out of town when the bill came to a vote, so Lenzner kept an appointment in Cambridge. Murphy had picked up support at a Republican luncheon the previous day; several moderates (Hatfield, Fong, Packwood) went along. Fifteen senators were away from Washington,

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including Muskie, McCarthy, Brooke, Goodell, Percy, Harris, Church and Mansfield. (It was the day before Moratorium.) Murphy's amendment passed 45-40. Legal services, one of the few survivors in the War on Poverty, is in trouble.

For the past four years legal services has been picking at people unaccustomed to the poor calling them into court. California's Governor Ronald Reagan would like to be done with California Rural Legal Services, which enjoined him from cutting off funds to the state's Medicaid program, won a decision ordering 18 California counties to begin food stamp programs, and got the grape growers to stop trucking Mexican scabs into their fields. South Florida Migrant Legal Services has been suing the state's big agribusinesses for the migrants who work Florida's vegetable and fruit farms (see "Peonage in Florida" *NR*, July 26). Thirty legal services lawyers working on the Navajo reservation in Arizona have taken on local schoolboards, white traders who exploit the Indians, and the conservative tribal council, which keeps the Indians in check. Sen. Barry Goldwater is trying to drive the lawyers out of his state. (While I was talking with legal services lawyers at OEO, a congressman called to say he wanted the lawyers out of his district, a fairly routine request.)

Cases brought to the Supreme Court by legal services are costing the states money. Decisions striking down residency requirements and man-in-the-house regulations immediately made 200,000 more people eligible for welfare payments. For thousands of legal services lawyers the job is primarily one of making the poor beneficiaries of the law rather than its victims. It is now illegal for landlords to evict tenants in retaliation for reporting housing code violations; collection agencies have had to stop harassing low-income debtors.

In his exchange with Sen. Mondale, Murphy said he was a big booster of legal representation for the poor. "I was one of the developers of the concept," he said. But "legal services [was] for some poor fellow who cannot afford a lawyer, and it was not to take up some extravagant move by social reformers, labor unions and other organizations of that kind." But the precise point at which a lawyer leaves off fighting for some poor fellow (like Escobedo, Gideon or Miranda) and becomes a reformer is clear only to Sen. Murphy. The lawyers in legal services can't see it, and if Murphy's amendment passes, says Terry Lenzner, "I think they'll leave in droves." They'll leave because politics and a governor's whim would dictate whose rights are to be defended. Murphy says the amendment would empower governors to veto specific lawsuits. That means a governor could order legal services to drop suits against state welfare agencies or his party's financial friends. Political pressures have already killed some Florida lawsuits. The amendment would cripple recruitment of the bright law school graduates who are largely responsible for the program's success. Legal services in the South would probably disappear.

Because committee hearings on the Economic Opportunity Act are over, opponents of the amendment are lobbying in the House, which will vote on the bill in two or three weeks. The American Bar Association, regards the amendment as an assault on the entire legal profession and is working against it. OEO Director Donald Rumsfeld met recently with some former House associates who he hopes will take the lead against the amendment.

Earlier this year the legal services lawyers caused a flap when they demanded that the Administration make clear its commitment to their program. The White House increased legal services' budget from $42 million to $58 million. Now the poor want the same. "In 1965 we told them they'd have access to the courts and they didn't have to take their grievances into the streets," said one OEO lawyer. "The Murphy amendment cuts off the only effective instrument they have for redress of grievances. That doesn't leave them with much alternative."

Daniel Henninger

Caroline and Charnita

For many Americans the suburbs are merely a way station on the escape route from the city. With congestion, pollution, crime, and Negroes in hot pursuit, urban refugees flee beyond suburbia to such fashionable havens as the new Leisure-Recreation-Country Club-Lake Communities found within weekend driving distance of most major cities. A few build permanent homes; most use their land to get away from it all.

The developments have several strong pulls on the middle class. They offer picturesque settings (albeit manufactured), investment opportunities, a second home, country-club status (for a few dollars down), and no crime in the yet-to-be-paved streets. But they are often less trouble free than their promoters suggest. Sales contracts violate at least the spirit of Truth in Lending, fees and assessments rival city taxes, developers guard their freedom to abandon projects before they are completed, restrictions on land use are as onerous and complicated as city zoning, prices are inflated by grandiose and deceptive advertising schemes.

The Justice Department, in October, brought suits against two of the exurban recreation developments in the Washington, D. C. area, charging violations of Title VIII of the Civil Rights Act of 1968. Complaints issued by Attorney General John Mitchell, Assistant Attorney General Jerris Leonard, and Justice Department attorney Frank E. Schwelb, allege that Charnita

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Inc. (a Pennsylvania development) and Lake Caroline, Inc. (near Richmond, Virginia) engage in racial discrimination of a subtle sort that evades detection, but serves the purpose. White customers who ask land salesmen at the developments whether property is sold to Negroes are told that it is. It is stressed, however, that very few Negroes have made purchases. Negro prospective customers are discouraged in every way possible from buying.

The Justice Department is seeking to enjoin further sales on a racially restrictive basis. Charnita has unloaded 3000 lots of the 10,000 available for sale; Negroes own two of them. Lake Caroline, with 1800 lots for sale has four black owners, with five lots among them. Affidavits the Justice Department has obtained, with the aid of the FBI, tell explicitly how the two land outfits ensure the exclusiveness despite heavy advertising in Washington, D.C. (which has a majority of blacks).

Montyne Fischer was employed last summer as a telephone solicitor for Lake Caroline. It was her job to set up home visits by the firm's salesmen. She collected a one-dollar fee for each appointment she made with a white person. Negroes, she was told, didn't count. When a prospect contacted by phone turned out to be black she got no fee. In her affidavit, Miss Fischer stated, "If I found that a person to whom I was talking on the phone was a Negro, I was supposed to, and did, discourage him from pursuing his interest in any way. For example, if I called to reconfirm an appointment with a person who sounded black, I would tell him that the public relations man could not make it on the scheduled evening after all. Afterwards, I would tear up that person's card and never call him back." According to Miss Fischer, Lake Caroline had a policy against hiring Negroes in the office in which she worked. Applications from blacks were marked with a check to distinguish them from white applicants. The check mark was ambiguous enough to avoid suspicion should anyone inquire into hiring practices.

An FBI investigation of Lake Caroline undertaken in August resulted in one Negro being hired. According to Miss Fischer, her supervisor, Joseph Marra, "said the FBI was on his back and that he would hire a black girl so that we would have one when they [the FBI] came back. He said he would fire the girl in a few weeks after the heat was off."

The cards of potential customers whom telephone solicitors suspected were Negroes were identified by a special code. Initially the code was "XX." After the FBI came around, it was changed to "2," a number "previously used for persons who were not interested in buying lots, so all Negroes would be treated as uninterested, whether they were in fact interested or not." As a last resort, a black person who insisted on buying could be got rid of by a vote of the members of the Lake Caroline Property Owners Association.

An official of Lake Caroline told the FBI that sales to Negroes were not attempted because (in the agent's words) "most Negroes could not afford the price of a lot, and it was not worth the time . . . to contact them." A former Lake Caroline salesman, Martin Lee Greenberg, told the FBI, however, that the Lake Caroline development was not looking for wealthy or even upper-middle-class buyers but rather government workers and working class people who want a modest retreat and who can afford small monthly payments. (A half-acre of land at Lake Caroline can be had for as little as $1800; $180 down and the balance paid over five years.) William Chamberlain, a former telephone solicitor for Lake Caroline, states in his affidavit that Negroes were ready customers but according to company policy had to be turned away. "In many instances," said Chamberlain, "Negroes would be very friendly over the telephone and more willing than white people to have salesmen visit them in their homes, and this made the discriminatory policy particularly offensive to me. On one occasion, a Negro lady whom I called asked me if the company was prejudiced, and, in order to tell the truth, I had to tell her that it was and then had to tear up her card." He did this in at least 30 instances, he said. Ralph De Felice, a white Air Force dentist who visited the development in January was told by a salesman that a five-point "system" was employed to screen out Negroes.

The Justice Department, in the Charnita case, alleges that the development avoids inviting blacks to promotional dinners and fails to provide information about the availability of property when a black person shows up to look at land. White customers who ask salesmen about the presence of Negroes at Charnita are told that, yes, they do have *one* family.

David Sanford

The "Silent Epidemic"

The old, cracked paint flaking onto the floors of dilapidated houses and tenements is one visible sign of the decay of our cities. It is also the source of what, if infections are excluded, may be America's most common childhood disease. Lead poisoning is a disease of small children who eat chips of leaded paint; it is especially common among children with a tendency toward pica, a rather vague term for indiscriminate eating named for the dietary habits of the magpie, who has a reputation for not being too choosy about what he eats. Two-year olds account for half the deaths from lead poisoning; most reported cases involve children between one and three. Lead poisoning is peculiarly an

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affliction of the poor – middle-class children get pica, too, but usually don't have sweet-tasting chips of leaded paint to chew. Since the 1940s, paint with a titanium dioxide base has replaced leaded paint in most decent American housing. Many cities have ordinances banning leaded paint from interior surfaces. (How well the ordinances are enforced is another matter.) In most cases, though, no one has undertaken to remove the ancient layers of lead pigment from the walls and woodwork of old slum buildings.

Nobody knows the total number of victims across the country; one fairly cautious estimate suggests 225,000 children. Spot tests in New York, Chicago, Rochester, Baltimore and other cities show that five to ten percent of slum children below the age of six have dangerously high levels of lead in their blood. In New York, a group called the Scientists' Committee for Public Information says there are between 9000 and 18,000 poisoned children; other health officials put the figure much higher.

Whatever the exact figures are for New York and other cities, a large and on the whole unacknowledged epidemic of lead poisoning is raging, yet the number of cases detected and treated is terribly small: something like 600 a year in New York, for example. This is partly because of incompetence and the general deterioration of medical services for the poor: one big New York medical center dealing with slum residents failed to report a single instance of lead poisoning in a three-year period. Knowledgeable doctors say that lead poisoning is hard to spot unless you're expecting it: you have to test, and a good rule of thumb for the ghettoes is that the more doctors test, the more cases turn up. Chicago is the only city with mass testing.

Early symptoms are vague and can be easily mistaken for the flu or any of a dozen common childhood ailments: loss of appetite, lethargy, anemia, stomach pain and cramps, constipation. By far the greatest number of cases crop up in the warm months between July and October, perhaps because lead in the intestines is more readily absorbed by the body in sunlight and higher temperatures. Like other metals, lead accumulates in the body over time: a child who eats two or three paint chips a day may go several months without showing definite symptoms. In the meantime he can be building up a severe and maybe fatal dose. In late stages of poisoning children vomit; they may have convulsions or go into a coma. Treatment consists in getting the child away from the source of lead so his system can work off the dosage. In recent years, advances in techniques of treatment have cut down the number of deaths from severe poisoning; there are chelating agents that can bind the lead ion and remove it from body tissue. With these and other advances, the death rate from severe poisoning can be cut from 66 to five per cent. At least a quarter of the survivors, however, will suffer lasting effects such as chronic nephritis, epilepsy, cerebral palsy, mental retardation.

Doctors who deal with lead poisoning stress that while it can be treated, it is pointless to cure a child and then send him back home to be poisoned again. The leaded paint has to be gotten rid of. This is the nub of the problem. Even with mass testing and better techniques, doctors are likely to see the same children and their brothers and sisters coming back again and again for treatment; each time there will be more and more evidence of residual brain damage.

A wide assortment of publications has begun to call attention to the lead poisoning epidemic, and to the wholesale lack of concern on the part of health officials in most cities. Citizens' Committees to End Lead Poisoning are forming. In Minneapolis, the first order of battle has been revision of city ordinances. In New York, the first concern has been to pressure complacent health officials to undertake mass testing. Some fairly typical concerns of these citizens' groups are reflected in a report on New Haven's administration of its paint ordinance. The report, drawn up by a legal assistance group, attacks the city's inertia and then lists recommendations: inspection programs, clear lines of authority among city agencies empowered to order peeling paint removed, more stringent code enforcement, 48-hour notices to landlords at least to scrape and repaint, and in special cases to repanel, walls with plaster or wall board, temporary housing for families whose children are poisoned, more staff for inspection, use of courts to appoint a receiver of rents when a landlord has failed to shape up. Nationally, a great step forward would be passage of three bills first proposed by Rep. William F. Ryan (D, N.Y.) and now supported by 19 other congressmen. The bills provide federal money to treat victims of lead poisoning and to get rid of leaded paint; one would require that any locality getting federal funds for code enforcement or rehabilitation draw up and carry through a program to end lead paint poisoning. Presumably some of this money could be spent developing cheaper types of wall- and plaster board, as well as making commercially available vinyl wallpapers and varieties of adhesive paints not yet on the market.

This "silent epidemic," as it is called by Dr. Rene Dubos, offers an exceptionally clear illustration of the twisted priorities in our whole system of health care. It is representative of a growing number of public health and environmental problems that cannot be solved in the clinic alone, problems that will inevitably involve doctors' and citizens' groups in politics. Where authorities refuse to undertake universal testing programs for lead in children, and where they continue lax enforcement of codes, demonstrations and disruptions are appropriate. Depending on local circumstances, doctors should also consider giving public support to tenant unions in both legal and illegal rent strikes to force landlords to act.

Joseph Featherstone

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The Nixon Watch

The Welfare Story—Plot and Subplot

by John Osborne

The program of welfare reform that Mr. Nixon submitted to Congress in August is being chewed up in the House Ways and Means Committee. The best that he could say for its prospects when he last mentioned the subject on October 12 was that "*some* new approach to the whole problem of welfare" will be enacted. His staff lobbyist-in-chief, Bryce Harlow, hopes for final action next year at the earliest. Others at the White House will be pleased, given the manifold skepticism and opposition evident in Congress, if the ultimate legislation represents movement "in the general direction" of the President's proposals.

Drastic revision seems so certain that only the essence of the Nixon program need be summarized here. It embodies two revolutionary principles. One is that the federal government is obligated to guarantee to welfare beneficiaries, families and individual adults, a minimum national standard of support. The other is that family heads who work for a living and earn less than a declared minimum (below "the poverty level") are entitled to a federal payment sufficient to bring their family incomes up to that minimum. A third principle, basic to the program, is not revolutionary at all. In the opinion of many critics, including some officials who contributed importantly to the Nixon concept, it is reactionary and self-defeating. This principle is that employable beneficiaries of welfare should be made to work. If they refuse to work or to accept training for work at any job deemed by officialdom to be "suitable" for them, they (but not their dependents) should forfeit their welfare payments. Other major elements, varying from the expansion of manpower training facilities to increases in social security payments and taxes and to the assumption by the federal government of some welfare expense now borne by states and localities, figure in the total program. But the essential aspects of it, the ones that would commit the nation to a new welfare course, are the national minimum, supplementary payment to "the working poor," and the "work requirement." Whatever the outcome in Congress may be, whatever the lacks – and this journal was among the critics who found the Nixon reforms short of the need when they were announced – the welfare program reflects and constitutes the best in domestic planning and policy that we have had from the Nixon Administration.

The Nixon policy process is not likely to work in the future to better effect than it did in this instance, and it may never provide a better example of how Nixon evokes, guides and responds to conflicting views and pressures.

One of the few genuine convictions that Nixon brought to his Presidency and stuck to through the initial months was that the welfare system was an "utter disaster" and required fundamental change. His campaign chatter about getting dependent millions "off welfare rolls and onto payrolls" obscured a more sophisticated understanding that it was not really, as so much of his rhetoric suggested, a simple matter of putting the bums to work. A task force headed by Richard Nathan of the Brookings Institution, now an associate director of the Budget Bureau, came up with the main lines of the President's eventual approach before he was elected. His White House assistant for urban affairs, Daniel P. Moynihan, won that appointment and Nixon's confidence in part with some informed and strongly asserted views of how welfare change should be accomplished. Thus fortified by expertise, Nixon first promised to produce a complete welfare program in March. But he discovered in that month that even the proposal of welfare reform required the resolution of basic conflicts between his own experts, between members of his Cabinet, between *their* experts, and – more fundamentally – between an inevitable rise in welfare costs and the President's competing commitment to reduce rather than increase the federal budget.

The personal alignments among those advising the President were soon fairly clear, though never as simple as many "inside" accounts indicated. One of the polar figures was Arthur Burns, an economist who during the Eisenhower Administration, earned national distinction and Nixon's trust. As Nixon's White House Counselor, the only assistant with Cabinet status, Burns was nominally responsible for the formulation of all domestic programs. Congress willing, he is leaving the White House soon to be chairman of the Federal Reserve Board. But his standing with and influence upon Nixon will continue, and he powerfully affected the slow evolution of the welfare program. His rather ponderous and relentless harping upon costs forced successive estimates of new federal expenditure for the Nixon changes up to $4.4 billion, a figure that is still being revised upward and, when submitted, was at

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least a billion short of the real costs. One facet of Burns' role would have been comical if it had concerned less serious a matter. The ebullient Moynihan, HEW Secretary Robert Finch, Labor Secretary George Shultz, and other advocates of the most generous and humane approach attainable within foreseeable budgetary limits were under the impression, well into July, that they were getting somewhere in their insistence to Nixon that the "work requirement" wanted by Burns was mistaken in principle and would be impossible to administer in practice. Nixon had agreed in private with Burns, months earlier, that a strong work requirement would be written firmly into the final recommendations. Knowing this, Burns accepted with more equanimity than he chose to display in council the proposal to extend supplementary welfare to the "working poor" – a concept, hitherto alien to his conservative mind, that he actually but never openly came to applaud in principle and did not resist when the chips were down.

Another influential and, in this affair, somewhat misunderstood adviser was Attorney General John N. Mitchell. A natural assumption, in view of his cramped social attitudes in general, was that he would oppose to the end a national welfare minimum that overrode state standards. The proposal to supplement earnings of the "working poor" with federal money might have been expected to send him up the walls of Nixon's Oval Office. Mitchell sat with Nixon and the others concerned in uncounted Cabinet, Cabinet Economic Committee, Urban Affairs Council and UAC sub-committee meetings devoted to the evolving welfare program. Never once, according to officials at those meetings, was he heard to open his mouth on the subject. He expressed himself only to Nixon, in private. But two impressions prevail and are taken as fact by the others. The first is that he early recognized and settled for Nixon's determination to bring about real welfare change. The second impression is that he came down in the end, in late July and early August, on the side of the relatively liberal approach fought for by Moynihan, Shultz, Finch and Nixon's anti-poverty director, ex-Congressman Donald Rumsfeld of Illinois.

In June, impatient to get along with the business and sensitive to the view that he was proving to be a domestic laggard, Nixon took the responsibility for staff coordination away from Moynihan and Burns, who were opposed on every major welfare issue, and assigned it to Counsel John Ehrlichman. In order to give Ehrlichman and his helpers something coherent to work with, Secretary Shultz was instructed to synthesize the competing alternatives in a single paper. The resulting document was notable for two things – its cavalier dismissal of Burns' cherished work requirement, and a recommended standard of federal payments to both the working poor and to the wholly dependent poor that considerably exceeded the modest levels recommended to Congress by Nixon. Shultz functioned at this stage as an analyst of others' views and as an advocate of his own. Ehrlichman professed to the advisers whom he was coordinating that he intruded no views of his own. But he had views, he expressed them to Nixon, and they (like Mitchell's) served on balance to favor the Moynihan-Shultz-Finch approach over the cautious policy that Burns continued to urge upon the President.

By the time Nixon took off on his Asian tour in July, he had made his basic welfare decisions and had imparted them to Ehrlichman, who shaped them up in a semi-final discussion draft which he delivered to the President in Bucharest. Nixon and Ehrlichman refined the draft in talks aboard Air Force One, during the last legs of the homeward flight, and the Administration's welfare program was to all effects complete when the President landed.

On August 6, two days before he presented the program in somewhat oversimple terms to the country on television, and three days before he departed Washington for a month in California, Nixon summoned the Cabinet, Vice President Agnew, and the staff assistants principally concerned with developing the proposals to the Presidential retreat at Camp David, Md. His purpose, Nixon said in opening the all-day session, was to tell those present what he had decided. He said that the decisions were firm and would not be changed. But he wanted to hear, surely not for the first time in most instances, what his associates and subordinates thought about the decisions. He could have been implying, though some who were there were not entirely sure, that this was intended, that those who opposed the decided program in part or altogether should say so then and be silent thereafter.

It was soon reported that only three Cabinet members – Finch, Shultz and Rumsfeld (who had Cabinet rank) – spoke up in support of the whole program. A more meaningful fact was that Mitchell and Defense Secretary Melvin Laird did not speak against it. Laird had been the ranking Republican member of the House appropriations subcommittee dealing with welfare, he was regarded by the President and others as an authority on the subject, and his opposition to the adopted approach during the period when it was evolving could have been decisive. His demeanor of acceptance at the Camp David meeting indicated that he never had opposed it. George Romney, the Secretary of Housing and Urban Development, didn't like it – he preferred reliance upon his department's Model Cities approach to urban problems – and he said so in his rough and evangelical way. Burns and Secretary of the Treasury Kennedy restated, mildly, their known doubts that the prospective costs had been adequately calculated and weighed. But the star performer, in more ways than one, was Vice President Agnew. He said that he deplored and abhorred the extension of welfare rights

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and support to the working poor. He saw no saving merit in the claim, soon to be emphasized by Nixon, that the work requirement kept the program from guaranteeing an income, however low, to everybody who qualified for welfare, regardless of whether they were too lazy to work. Men there who thought him utterly wrong said afterward that Agnew spoke with passion and dignity. He stated his views at a mid-day luncheon and then left to preside over the Senate. The manner of his leaving will not be forgotten.

The Senate was about to vote on Nixon's Safeguard anti-ballistic missile system, the issue was close, and the President counted on Agnew to cast the deciding vote for Safeguard if there was a tie. Agnew turned at the door of the luncheon room and said to Nixon, "Mr. President, if there is a tie I may telephone you before I vote and ask you whether you've changed your mind about this welfare program."

Brazil: Subverting The Universities

by Fagundes Bandeira

Despite archaic bureaucratic and academic procedures, despite excessive power in the hands of a few senior professors, despite the uncertainties of politics, Brazilian universities, especially the University of Sao Paulo, had made striking progress. Brazilian teachers and students have not taken their universities for granted. There had been few academics with overseas training who did not return; some returned from political exile and worked for months without pay. All this has ended.

Since the military seized power on April 1, 1964, the universities have been periodically harassed. During the early months, a small number of professors were dismissed, stripped of their political rights, imprisoned, or forced into exile. In October, 1965, the University of Brasilia – which promised to be the first major university in South America – was torn apart; a number of professors were fired (without hearing or right of appeal) on political grounds. A large majority of their colleagues resigned in protest. The National Union of Students was outlawed.

Late in 1968, the student residence at the University of Sao Paulo was invaded by the army, its occupants arrested and imprisoned – some for several weeks, without charge or trial – and the residence closed down. (Since then, part of it has been used to house military personnel.) A few months earlier, the building of the Faculty of Philosophy was attacked and completely destroyed by the students of Mackenzie University (a private institution, well known for its support of the regime). The police stood by and watched. A student was shot dead, others wounded. Last December, several hundreds were arrested for attending a meeting of the banned National Union of Students. Some have been jailed for up to 18 months. The worst abuses, however, followed promulgation of the 5th Institutional Act (IA-5) on December 13, 1968. Institutional Acts are decrees of the military government which are not bound by the law or the constitution. IA-5 empowers the president to suspend the political rights, to dismiss or to retire any person holding a position financed by the government, to decree any legislation deemed necessary to fight subversion. Before he is penalized under a decree, a person is not informed that he is under investigation, no charges are brought, no reason given for the penalty, no defense is permitted, and there is no opportunity for public appeal. Since last December, lists of people penalized have appeared regularly. Over 300 have been deprived of political rights; over 200 have been compulsorily retired, including approximately 95 university professors.

Then on February 26th of this year, there appeared decree 477, aimed at actions designed to bring to a standstill the activities of the institution; plots against persons or property; acts designed to organize, or participate in subversive movements, picketings, parades or unauthorized assemblies; the transportation, preparation, printing, possession and distribution of "subversive" material of any nature. The penalties are severe: (a) for a professor, dismissal for five years; (b) for a student, expulsion for three years and a prohibition against his entering another educational institution; (c) for a scholarship-holder, loss of scholarship and ineligibility to get another for five years; (d) for a foreigner, expulsion from the country. Judgment is made by summary process instituted by the director of the institution. The director himself is subject to criminal proceedings, should he refuse to in-

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stitute an inquiry when an accusation has been made, or should he refuse to apply penalties.

Subsequent instructions issued by the minister of education on April 25 specify that any person may bring charges against any member of an educational institution. Should the director find the accused *not* guilty, the case is automatically referred to the minister of education for further consideration. Directors of educational institutions refuse to collaborate at jeopardy to themselves. Punishment under this decree does not preclude subsequent criminal proceedings.

Because of rigid censorship, it is impossible to know how widely decree 477 has been applied. Only two reports have appeared, one concerning students in Rio de Janeiro, the other about medical students in Recife. The report on the latter case is revealing: 34 were acquitted; two were punished because they "did not succeed in *proving their innocence* regarding recent movements of agitation in the school." (*O Estado de Sao Paulo*, July 30, 1969.)

On March 21, amendments to the Law of National Security were published; further amendments were announced September 27. This law provides (a) "making known, by any means of social communication, false news, or true news out of context, in such a manner as to establish unfriendly feelings in the people toward constitutional authorities. If such news causes breach of order or endangers the good reputation, the authority or the credit of Brazil, the penalty is doubled"; (b) inciting war, subversion, collective disobedience of laws or racial discrimination; (c) trying to reorganize any political party or association dissolved by law, or to organize any political party or association involved in activities that are dangerous or detrimental to National Security.

Only two parties – put together from the remnants of previous parties – are officially recognized. Student unions have been replaced by tightly-controlled, government sponsored organizations. (Despite the law, however, the original unions still exist, and the official organizations are effectively ignored.) The National Congress (parliament), suspended under IA-5, was reconvened October 22 only after having been purged of "dangerous" elements.

"Subversive propaganda" is defined by the government as follows:

1. Using any organ of social communication, such as newspapers, magazines, periodicals, books, bulletins, pamphlets, radio, television, cinema, theater, and related media as a vehicle of propaganda for adverse psychological war, or revolutionary or subversive warfare.
2. Inciting people in their places of work or study.
3. Holding assemblies, public meetings, or public demonstrations.
4. Holding forbidden strikes.
5. Causing injury, libel or defamation, when the offended party is an organ or entity that exercises public authority, or an official in the course of his duties.
6. Manifesting solidarity with any of the acts listed above.

"Adverse psychological war" is defined as "the employment of propaganda, of counter-propaganda, and actions in the political, economic, psycho-social, and military fields, with the intention of influencing or provoking opinions, emotions, attitudes and behavior of foreign groups, unfriendly, neutral or friendly, against the execution of national objectives."

All offenses under the anti-subversive law (penalties vary from 6 months to 20 years) are tried before a military court. During pretrial investigation a person may be held in prison for 30 days, 10 days incommunicado. After the defense has been presented, the court may convict the accused of an offense not specified in the accusation, even if such an offense involves a more serious penalty than that imposed for the original charge. Charges hit a peak (265) during Governor Rockefeller's recent visit. Roughly 70 percent of those charged are convicted. The specific nature of the alleged subversion is seldom given in newspaper accounts, but there have been published reports of convictions for organizing one-day student strikes, writing slogans on walls. It is not uncommon for police or members of the army to enter a university campus and arrest students. Professors have been taken from class for questioning.

Government repression is not restricted to those who act against it. In late April, about 70 professors were compulsorily retired, under 1A-5. (About 25 more have since been added to the list; in a comic turn, three were removed when it was discovered they were not professors at all.) On the list were several of Brazil's most outstanding scientists, including the well-known physicists Schenberg, Leite Lopes and Tiomno. Some on the list had only recently responded to the government's call for exiled scientists to return home. There were no public hearings, no opportunity to offer a defense. Very few of the 95 were involved in politics, though none were supporters of the regime. The list contains several professors known to be personal enemies of the minister of justice, who is also rector (on leave) of The University of Sao Paulo.

The government plans to streamline the universities, so that they will perform service roles in the economy. Research and the study of the humanities are to be downgraded, despite the fact that badly-needed secondary school teachers are mainly drawn from graduates in the humanities, and that more than 50 percent of Brazilian adults are not literate.

Rectors in some universities now apply political criteria in choosing professors, vetoing young nominees

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with an activist past. The autonomy of departments has effectively been removed by a new regulation recently signed by the acting rector at Sao Paulo. The same regulation is designed to reduce the number of professors in "dangerous" departments, such as philosophy and social sciences. Long overdue proposals for university reform were vetoed, thus serving to consolidate the power of certain senior professors who cooperate with government. The long-established tradition of free education at state-run universities has been upset by introducing fees for all entrance examinations. The fees are not large, $25 on the average, but they are a barrier to poorer students, and they may be used as a precedent to justify subsequent increases that could bar poorer students from the university.

Some departments no longer have enough professors to teach basic courses. There is blow after blow – suppression of student movements, arrests, dismissal of professors, more arrests, reports of friends being tortured, regulations making it more difficult for the poor to study, more arrests, the university gradually reflecting an alien ideology, opportunists and those hostile to free inquiry acquiring greater power, a promising young teacher's contract not renewed, police and sometimes soldiers conspicuous on the campus, an attempt to demonstrate crushed and unreported, more arrests – defeat after defeat. Study becomes impossible, teaching becomes lifeless. Only opportunists flourish in this atmosphere. For example, at a meeting of the full professors of the faculty of philosophy at Sao Paulo, tenure of a professor of 20 years' standing was challenged on the ground that his moral character was questionable. No evidence was given, yet the challenge was defeated by only one vote. One tends to give up in disgust.

Some are questioning whether it's worth struggling to keep the university alive. They propose instead that all professors leave the country, or that the universities become centers of active resistance. The law is so all-embracing that there are few who do not break it. To call a strike, or to organize nonviolent resistance can lead to imprisonment. Writing this article is worth three to eight years in jail!

The problems of the country are enormous – poverty, inequality, class divisions, growing illiteracy, exploitation, oppression. The military regime is doing nothing about them – despite the economic half-truths that are constantly uttered by American apologists of the regime. The death penalty has been introduced; there have been mass arrests of "suspected" terrorists and a decree making all caretakers of apartments part of the secret police.

When the generals were announcing that more congressmen would be dismissed, but that the Congress would soon be called from its recess to ratify the election of a new president (to give his appointment the appearance of legality), congressmen were sending notes of congratulation to the about-to-be-named president. Neither the law nor the constitution can be taken seriously; both are violated at will by the regime. There are important elements of resistance in the Church, especially in the Northeast, but the position of the Church is at best equivocal, at worst collaborationist.

If there is to be resistance, it must develop from new centers, and that is what is happening. Brazilian students tend, more than any other group in the country, to be aware of the present reality. I do not want to give the impression that anything like a majority of students are involved in resistance. The majority wishes to "get on" in the world. Nor do I want to suggest that resistance groups have all the answers to Brazil's problems, or even that their programs would be any better than those now in operation, though they could hardly be worse. The resistance groups are a mixed bag. Castroites, Maoists, Trotskyists, Catholics in search of social justice, others simply opposed to the oppression. None has offered any clear chart for development. Still, the resistance is new, and it contains many intelligent people. What unites it at the moment is opposition to the regime.

Now we have our new president, Mr. Medici. He has promised to restore democracy, he has expressed a desire for dialogue with all groups and support for freedom of the press, speech and freedom of the university. These are words without meaning. His concern with freedom is to free people from interference by trouble-making minorities.

The Author Comments

The author of this report teaches in Brazil. In his letter accompanying the article, he writes:

"Most of the American press seems content to carry half-truths about Brazil, concentrating on the fact that the military regime has improved the economic situation by reducing inflation. But they ignore almost anything else. On the other hand, the leftist press (the little I see of it here) tends to be content with general ideological condemnation of the regime.

"Much of the data to which I refer can be found piecemeal in the insignificant pages of the Brazilian newspapers. The figures which I give are minimal, those I have actually counted. All translations have been made by myself. Regarding other facts referred to, either I have direct personal evidence for them, or they have been obtained from persons who do have direct evidence for them. I have not relied at all upon rumor. Had I done so, the picture painted would have been grimmer."

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Reflections on the Chicago Conspiracy Trial

The Image Of Justice

by Harry Kalven, Jr.

For several weeks now eight defendants, the self-named Conspiracy Eight, have been on trial in the federal district court in Chicago before Judge Julius Hoffman. They are charged with conspiring to cross state lines with the intent of organizing, encouraging, promoting, and inciting a riot in violation of a new federal "anti-riot" statute, which carries serious penalties. Because the riot in question involves the disturbances during the Democratic Convention in Chicago in August 1968, because this is the first court test of the federal statute, because several of the defendants – David Dellinger, Abbie Hoffman, Jerry Rubin, Tom Hayden, Rennie Davis, Bobby Seale – have become familiar personalities on the national scene, and because the meshing of government and defense trial strategies gives the case the appearance of a very modern play, it invites reflective comment.

There are, however, some impressive risks in commenting at this time – risks of impropriety, prematurity, and ignorance. An important legal tradition cautions against commenting on cases while they are being tried, since during that interval the formation of public opinion can have little utility and the effort to form it can have consequences for the tranquility and impartiality of the trial itself. It is a little like appraising the recent World Series at the end of the second game. The defendants may be acquitted by the jury, the government proof may disclose concrete and damaging evidence of the defendants' plans and activities, or some crisis may cause a breakdown of the trial process. In brief, the nature of the event is still in many respects uncertain, and as a result so is its legal and political significance. And, finally, one must comment from an armchair, without the benefit of a trial record, relying on newspaper reports, cocktail party insights, and the observations of a few friends who have chanced to visit the trial.

First, the basic legal issues. There are problems about wiretap evidence, reach of conspiracy doctrines, and the constitutionality of the anti-riot statute. The legal system functions well, I think, in providing an effective forum for challenges of this kind and the merits of these challenges will have their day in court should the trial jury decide against the defendants. It will be a later day and the court will be an appellate court.

The power of the *federal* government to intervene in the matter is predicated on crossing state lines or use of interstate facilities, and consequently depends on the constitutional power to regulate interstate commerce. The unitiated might find it a little odd that the power to regulate commerce covers regulation of something so little related to commerce as a riot. It is odd, but the oddity is one that has long been sanctioned by the United States Supreme Court and indeed is the basis for the federal power behind the Civil Rights Act of 1964. No new gloss has been added to the Constitution to enable the federal government to reach the case at hand.

The political significance of intervention by federal law is something else. First, because the crossing of state lines is so minor an act, there is the possibility of federal intervention in virtually all local riots or disturbances in the future. This means not only that the hit-and-run rioter will be kept within the reach of criminal law, the ostensible purpose of the statute, but that there can be a single prosecutorial discretion exercised as to whether to take action or not vested in the Attorney General, thus turning the question of regulating demonstrations, protests, and riots into a matter of high national policy. Moreover, a striking feature of the new statute is the severity of the penalties provided; it permits a fine of not more than $10,000 or imprisonment up to five years or both, alchemizing what had often been left to the local laws on disorderly conduct, breach of peace, resisting arrest into a high-grade felony. Finally, it makes available the prestige and efficiency of the FBI as the investigative agency.

The conflict of the statute with constitutional norms about the freedom of speech and dissent is a more complex matter that will require high level appellate review to dissect and resolve. At least four problems suggest themselves.

First, there is the familiar and vexed problem of whether the speech is close enough to action. At some point of proximity the use of words to urge the com-

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mission of crime can be punished. John Stuart Mill in his essay on liberty spoke of opinions losing their immunity when expression was "a positive instigation to some mischievous act" and went on to suggest that a speech that corn dealers are starvers of the poor might be reached by law "when delivered orally to an excited mob assembled before the house of a corn dealer." Justice Holmes in a famous formula spoke of whether the speech "constituted a clear and present danger of a substantive evil." Justice Brandeis reminded the law of "the wide difference between advocacy and incitement, preparation and attempt, assembly and conspiracy." The application of such a distinction to turbulent facts is always a matter of the greatest difficulty; and this will be true in the Chicago trial when the time comes to measure whether or not the eight defendants can be said to have conspired to *incite* a riot:

Second, as a corollary, there is the fascinating problem of how to read the rhetoric of protest which has a taste for metaphors of violence. When is violence actually being urged and understood by its audience to be urged, when is it simply rhetoric, a radical idiom which is to be read not literally but like profanity or obscenity? Thus in the *Gitlow* case some 45 years ago the radical pamphlet at issue was read by the majority of the Court as urging "in fervent language mass action," as "the language of direct incitement." The same pamphlet was read by Justice Holmes in dissent somewhat differently. "Eloquence," he said, "may set fire to reason. But whatever may be thought of the redundant discourse before us, it had no chance of starting a present conflagration."

Third, there is the problem of whether the statute is worded too broadly or too loosely. The Court in recent years has been strict in requiring precision in legislation which may impinge on speech. The statute talks not only of inciting or organizing, but also of "promoting or encouraging" and these terms may prove troublesome despite a proviso that explicitly attempts to exclude "mere advocacy" or "expression of belief . . . of the rightness of such acts." Moreover, the definition of the key term "riot" may generate problems of vagueness and overbreadth. And finally the reach of the statute is notable in that it includes not simply crossing state lines but also the use of interstate communication facilities "including but not limited to mail, telegraph, telephone, radio, or television."

The statute thus raises interesting issues quite apart from the current effort to apply it to Convention Week. If all terms are given their maximum sweep, we can conjecture a case of a man writing a letter to persons in another state who end up participating in a local disturbance where the writing of the letter could become a federal crime. In recent years the Court has been willing to declare statutes affecting speech bad "on their face," testing the statute by its general operation and not solely against the facts of the particular case. Conceivably and ironically, the Chicago Eight might end up playing the role of vicarious champions of the unconstitutionality of the anti-riot act.

The most interesting legal issue suggested by the Chicago case concerns what I have called elsewhere the problems of the "heckler's veto," that is, the problem of reflexive violence resulting not from the urging of the speaker but from the hostile reaction he engenders in the audience. The law remains unsettled as to whether such reflexive violence can be counted against the speaker. The Chicago case will afford rich opportunities for working out a legal solution. Indeed, it is arguable that the case presents the problem in a new form. At its most skillful, "confrontation politics" contemplates inducing the Establishment to overreact, and thus impeach its own values and thereby escalate unrest. This is not the place to attempt to trace the ramifications for law of such a strategy, but I would note that there is a view on which it would not be simply absurd to charge someone with conspiring to cause a police riot.

Until, if ever, the legal issues reach the appellate courts, the interest is in the trial itself as a phenomenon. It has produced a steady flow of anecdote, and the full record of it will undoubtedly make a rich subject for several book-length studies.

Consider a brief sample of episodes. Four attorneys who were of record as representing four of the defendants do not appear at the start of the trial. Judge Hoffman reads their impoliteness as contempt and seeks to have them arrested. The crisis subsides a day or two later when attorneys finally appear and succeed in withdrawing and the judge drops the contempt actions. In the interim a group of 150 lawyers, many from out of state, come to Chicago to picket the courtroom and to offer to represent the four attorneys. Then Rep. Roman Pucinski (D, Illinois) requests the American Bar Association to investigate the ethics of the attorney-protestors. The event has an ebb and flow and visibility which are familiar. A minor difficulty in working out the representation of the multiple defendants is overreacted to by the trial judge producing a small crisis which then mobilizes lawyers to picket which in turn mobilizes Congressmen to protest their behavior. And the important thing is that it all takes place under a public spotlight and becomes a national news story.

Take another instance. Seven of the defendants de-

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cline to stand when Judge Hoffman enters the courtroom and only Bobby Seale, the Black Panther leader, rises thus providing for the national press a poignant and disturbing symbol.

Or again, the defendants' request that the court recess on the day of the Vietnam Moratorium so that they can participate. Judge Hoffman denies the request and orders them to stay. On the day of the Moratorium the defendants appear at the trial, but the day begins with defendant David Dellinger attempting to read the roll of war dead to the courtroom. And during the noon recess several of the defendants participate visibly in a public ceremony of the Moratorium.

The interaction between the trial and events taking place in the world outside was underscored by the performance of the Weatherman faction of SDS during their recent wild assault on Chicago. The trial was a chief target of their rhetoric, there were gestures toward marching on the courtroom, and on their wildest night there was much talk of "getting Judge Hoffman."

Or again, anxieties over possible disturbances of the trial cause Chief Judge Campbell initially to place the entire federal building off limits to photographers and TV. The massive building not only houses the courtroom, but a vast array of other government offices. Amidst an outcry from the press, the rule is modified, but an impression about the climate of the trial has been left.

The same concerns about preserving the decorum of the trial, a rationally important legal value, generate a series of regulations under which admission to the trial is difficult – a member of the public cannot just drop in. The difficulty is in part because the seats are genuinely scarce, but again an impression is left. Furthermore, eight federal marshals are kept in the courtroom to insure order. Defense Attorney William Kunstler charges in court, and hence in the newspapers, that the courtroom is "an armed camp." Again, there is some discussion about the absence of Negroes in the courtroom and the United States Attorney Tom Foran rises to say: "Let the record show that half the marshals here are black."

Or again a government witness solemnly testifies that defendant Abbie Hoffman tried to arrange for a $100,000 bribe for a promise to stay out of Chicago during Convention Week.

One other recurring feature of the government proof needs to be noted. On more than one occasion it has sounded curiously favorable to the defendants. Government witnesses have testified that the defendants did little by way of action to carry out their threats of riot, and that they witnessed the police clubbing the demonstrators. This may be read simply as another piece of evidence of how close the trial stays to the brink of absurdity, but it also indicates a note of integrity in the trial process. The trial is not political in the familiar sense of the employment by government of palpably false testimony to secure a conviction.

Another item. When Judge Hoffman reads the indictment to the defendants at the start of the trial, Kunstler rises to observe that he read it "like Orson Welles reading the Declaration of Independence." And Judge Hoffman not to be topped remarks that it is "a great compliment since he considers Welles one of our finest actors."

Or consider the following colloquy. Leonard Weinglass, another defense attorney, has been cross-examining a government witness for several hours. The Chicago *Tribune* for October 11 reports matters as follows:

> Weinglass during the cross-examination yesterday, began a question by saying:
>
> "I have spent a good deal of time with this witness." He was interrupted by Judge Hoffman who said:
>
> "Do you want a gold star for all the time you have spent?"
>
> Kunstler rose and objected to the judge's comment, and Hoffman said, "Sit down, mister." Kunstler said: "Kunstler is the name!"

Then there is the matter of Bobby Seale's birthday. Official apprehension is reported in the press as to what kind of birthday celebration the Panthers are planning for him, and Judge Hoffman, and there are reports of the assignment of extra marshals. When the day arrives nothing happens until the noon recess. When the court reconvenes only Seale is present in the courtroom. The judge is informed the other seven defendants are waiting in the conference room with a birthday cake they wish to present to Seale. Judge Hoffman angrily seeks to start the trial and orders the marshals to bring the defendants sans cake. They appear shouting "Happy birthday, Bobby." And Rennie Davis gets off the best line of the trial thus far: "Hey, Bobby, they've arrested your cake."

The outcome has been treated by defendants as a foregone conclusion. The other day Kunstler stated in court that he anticipated his clients would be convicted and that he was already at work preparing the appeal.

And then there is the circumstance that defendants and counsel for several weeks now have held a daily press conference during the noon recess.

The final item for my purposes comes from *Life* magazine for October 10. In a feature story on the trial there is a double-page spread. On the left-hand page is a picture of Judge Hoffman at his desk in chambers, a senior, sedate figure; on the right-hand page is a picture of Abbie Hoffman, hair wild, before a battery of mikes addressing "a noisy pretrial rally." The caption is: "The Straights vs. the Chicago 8," and the story, by William Barry Furlong, opens with the observation that the case belongs not to legal tradition but "belongs

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more to a Marx Brothers comedy as scripted by Salvatore Dali."

These examples raise different issues but they make, I think, a common point. The trial itself is an example of confrontation politics. Both sides are getting what they want. Both sides are concerned largely with forming a public image, which can be a good deal less precise than the trial record. The government presumably is attempting to vindicate the theory of Convention Week put forth in Mayor Daley's celebrated White Paper and to make a nationally visible example of mass demonstrations and protests that may get out of hand. The defense, and this is the more interesting point, is presumably attempting "to politicize" the trial. It is all reminiscent of the tensions that arose on American university campuses the past two years when disciplinary hearings were held in order to adjudicate disruptive student behavior. The tactic combines with ridicule a grim challenge to the legitimacy of every aspect of the procedure. Suddenly all sorts of routine details of tradition and etiquette become explosive and produce crisis after crisis. It was perhaps understandable that universities, which have had little experience with discipline, should find their procedures under serious attack in an environment where nothing could be taken as agreed upon. One would expect that the traditions of the seasoned legal system would be sturdier and would not yield to impeachment. The fascination, and importance of the Chicago conspiracy trial is that it puts that expectation in doubt.

In fascination with the new strategy, one should not overstate impressions available thus far. There are many signs that the trial after a hectic start is settling down to a long routine that may soon cease to commandeer daily press coverage. The government's proof, it now appears, will be lengthy and complex and not easily summed up. Defense counsel are increasingly pursuing the familiar tactics of cross-examination, testing credibility, perception, contradictions of government witnesses. And defendants backed off on a confrontation over their absence to participate in the Vietam Moratorium. Maybe the trial will simply serve to suggest a possibility that it will not itself realize.

But an impression remains that there is something new involved. This is not the same as the *Dennis* case, the Smith Act trial before Judge Medina two decades ago, where the flustered judge at the conclusion of the long trial punished the defense counsel for contempt for their strategy in conducting the trial, and was upheld by an uneasy and unhappy Supreme Court. Some of the repartee between counsel and Judge Medina has a familiar ring when read today (although despite the deep mutual hostility of bench and bar in the *Dennis* case, it is notable how much more urbane and surface-polite the colloquies were 20 years ago). In *Dennis*, counsel were charged with a campaign to goad the trial judge into error so as to insure reversal on appeal, a tactic which the Supreme Court found familiar. My feeling is that the current defense is concerned more with the public impression of the trial; that is where it hopes to win, whatever the trial outcome. What may be at stake, therefore, is the image of justice.

Two final reflections. The first concerns the role of Judge Hoffman who by personal style may appear perfectly cast for the purposes of the defendants' morality-play view of the trial. But it is difficult to think of any judge who would "look good" trying to keep order under these circumstances. One need only look back at the performance of Judge Medina to perceive how great the strain on the judge can be. In any event, Chicago lawyers will tell you that Judge Hoffman's manner has really not altered for this case. Nor is it clear that his critics from the press understand how much power to preserve decorum is given by legal tradition to the judge. He is a judge not chairman of a town meeting.

My last reflection goes to *the imprudence* of the government in bringing the case in the first place. It has posed an unnecessary and dangerous confrontation. Several factors converge on this conclusion. First, the statute itself comes with the awkward trademark of Senator Strom Thurmond on it and with the irony that it was passed as a rider to the Civil Rights Act of 1968. And it is being applied to a situation in which everyone had to cross state lines to get to the scene. Second, it involves restirring the turbulent and ambiguous events of Convention Week, a thicket it can hardly be profitable to re-enter. Moreover, it does so in teeth of the widespread publicity given the Walker Report and its appraisal of Convention Week. It runs, therefore, the risk of appearing to have charged the defendants with conspiring to cause a "police riot," which will seem like conspiring to get yourself lynched. And it means that the government witnesses who are largely police will seem to have an institutional interest to defend. Third, and perhaps most important, there are the special hazards conveniently symbolized by Abbie Hoffman. He is not a defendant to have selected lightly.

The risk is that the government will lose whichever way the trial comes out. If the defendants are acquitted, much of the power of domesticating protests and demonstrations will have publicly evaporated. If the defendants are found guilty, it will seem to confirm the defense's carefully nurtured image that it was a political trial.

In the end the question may be: Who is the relevant audience? Surely a not inconsiderable segment of the public must be pleased with a prospect that the conspiratorial truths about Convention Week will finally be established. The trial may be good politics, and one should never underestimate the judgment of Dick Daley. But on my view the relevant audience is the next generation, and the Chicago trial will not help.

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Stanley Kauffmann on theater

Indians
(Brooks Atkinson)

Oliver Smith has designed a setting for *Indians* that tries to open the proscenium stage into large and ambiguous possibilities. Arthur Kopit has tried much the same thing with the shape of his play. Smith's design fulfills itself, but Kopit's play remains an intention.

Kopit is dealing with the white man's treatment of the American Indian and has used, in musical terms a rondo form. The recurring theme, the enclosure of the work, is the Wild West Show run by Buffalo Bill Cody. Within it, by the interweaving of flashbacks and fantasy, Kopit tells of the last meeting between Sitting Bull and a Presidential commission of three senators in 1886 to improve the Indians' lot; the failure of the meeting; the subsequent assassination of Sitting Bull and other Sioux; and other outrages against Indians. Kopit's underlying theme would be obvious even if he had not publicized it elsewhere: he is attacking American treatment of all "inferior" peoples, Indians, blacks, Vietnamese and others. Equally important, Kopit is also attacking the neat moral transformation that America applies to these brutalities. (Jefferson Davis wrote that one of the benefits of slavery was its introduction of the benighted African to the blessings of Christianity.) The white American's way is the right way, and those who disagree are not merely enemies of America but of Good.

It is a familiar charge, not the less true for that. To vitalize it, Kopit has used a familiar device, a theatrical form within his own theatrical form. His device, the Wild West Show, is particularly apt, not only because it grows directly out of his material but because it symbolizes a national attitude toward that material – a conversion of history into show-biz in order to settle it, to fix the roles and the moral values forever. If history is written by the survivors, so, certainly, are the fictions, like the Wild West shows and the Westerns. The process long antedates Cody. For instance, in 1829 Edwin Forrest produced and starred in *Metamora*, a play about a noble red chief murdered by whites. This when the wars against the Indians had not yet approached their climax! It is as if an Elizabethan dramatist had written a play for Richard Burbage about a noble Irish king in order to demonstrate the English sense of fair play. America's "aboriginal dramas" (as they were called) in which the red man was often heroic, were attempts to cash in on melodramatic subjects, but they were also attempts to expiate guilt through facile theatrical tribute.

Kopit's device, then, is rooted in a valid theatrical-psychic base. His theme is pertinent. But from the very start, his play begins to fail. Glass museum-cases containing effigies of Buffalo Bill and Sitting Bull rise into the flies. (They have been visible since we entered; there is no curtain.) The "real" Buffalo Bill enters, riding one of those fake horses, on his own two feet, that clowns sometimes use and that were used in *Becket*. It is a promise of flight, of lift-off, but it fizzles quickly as Bill's opening remarks sag and, to bolster them, Kopit involves him in labored chit-chat with a voice on the p.a. system that urges him to hurry along. A suspicion of strain, of herniated imagination, assails us right away.

Even this scruffy p.a. device might work, or be tolerable, if one essential element – good writing – had been present, there and throughout. But a good writer is precisely what Kopit is not. The best prose in the play is an actual speech (I believe) of Chief Joseph's. If none of the characters is deeply realized, that may be a penalty of the fantasy form. But this form can be realized, can *exist*, only through the quality of its language. No one who saw *Oh, Dad* (to abbreviate that sophomoric title) and Kopit's bill of one-act plays a few years ago would expect much from him in language. He is still a deviser of clever ideas who thinks, apparently, that he can fill in the words when the time comes. Which is exactly how the words sound. After Sitting Bull is killed, Cody reproaches his ghost, "You were very unrealistic." The quality of that line, at such a moment, is typical. Kopit's language not only deadens the drama, it collapses the play's form.

Then there are the moments when Kopit the Poet feels that he must gambol, and can afford it. A Russian grand duke, on a hunting trip with Cody, calls him "Buffalo Billovitch." A Wild West melodrama is performed in the White House, with Cody and Wild Bill Hickok, in a travesty of hokum like the end-of-season romp at a summer camp. The playwright who could sink to such depths has a foggy conception of the heights.

The director, Gene Frankel, who did the first and excellent American production of *The Blacks*, has tried to supply a dream tegument: interludes are covered with strobe lights while actors float in slow motion. But Frankel is stuck, despite these and other devices, with a leaden work that will not respond to levitation. There is a Sun Dance, devised by Julie Arenal, that is a good deal more pounding drums than dance. For the most part, the Indians are just a lot of Equity members making like Indians. Only Manu Tupou, the Sitting Bull, manages to crack through the pretense to touch a primal nerve. Tupou is a native of Fiji who has appeared in *Hawaii* and other films, and he manages to convey a sense of the Natural Man, communicant with earth forces to which civilized man is blind and deaf. (But Kopit lets him down, too. When Sitting Bull asks the senators angrily whether they know whom they're speaking to, we expect a grand answer from him to his own question, but Kopit gives him only a few piddling phrases.)

Stacy Keach is Buffalo Bill. Keach is a young actor (28) of whom we have almost every right to expect almost everything. Two years ago he played Coriolanus with the Yale Repertory Theater, and the moment he stepped on stage – leaped on, actually – it was clear that he had misconceived the role and also that he was probably the only young actor in America who could play it. In *Indians* he gets the role right, but there is just not much role to get. The lack is not in psychological complexity, which this kind of play usually prevents, but in poetic richness, which it demands. From the beginning Keach conveys a sense of desperate uphill fight: an artist's fight to sink feelers and feeders into a center that will not respond, to draw fire from a piece of writing that simply rolls over flabbily the more he shakes it. Only at the end, when Cody, now dimly aware of what he has been part of, kneels to us and

(Continued on page 33)

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Reed Whittemore on verse

The Beatles Illustrated Lyrics edited by Alan Aldridge

(Delacorte Press, $5.95)

"I was the kingpin of my age group," said John. "The sort of gang I led went in for things like shoplifting and pulling girls' knickers down."

"We had masters who just hit you with rulers, or told us a lot of shit about their holiday in Wales or what they did in the Army," said Paul. "Never once did anyone make it clear to me what I was being educated for."

George had school complaints too: "Some schizophrenic jerk just out of training school would just read out notes to you which you were expected to take down. . . . Useless, the lot of them. . . . They were trying to turn everybody into rows of little toffees."

Unlike the others poor Ringo didn't have a chance to rebel as a child, and he didn't have "the education to do anything clever" because he was sick all the time. He stole a few things from Woolworth's ("just silly plastic things") but he was a late bloomer and the last Beatle to join up. He felt out of things for a while but made the scene finally so that he received equal time in the authorized biography of the Beatles by Hunter Davies (1968).

The quotations above are from the biography, maybe the first authorized biography deliberately devised to make its subject(s) look bad. The sixties were needed before the full monetary rewards of promoting dropouts and dropoutness could be realized. The Beatles found out early where the new big money was – it was in good anti-bourgeois vice – and with remarkable prescience they then hung close to the appropriately dissentious fads, right through LSD and the mysterious East, until they reached their present rich old age of 28 (average). For as John put it in the *new* book, "You see we're influenced by whatever's going."

John might have added, had he not been modest (he *did* say once that they were bigger than Jesus, but that was in Nashville), that they were not only influenced but influences. One of my children was just four when the first Ed Sullivan Beatle program occurred, and the "yeah yeah yeah" in a stirring love song released him instantly from whatever small influence we had had upon him. His head began to bob, he stamped his feet, he went off to find a drum – and grow hair. He has never recovered.

The new book, containing most of the lyrics the Beatles have themselves written, is another instance of their clever tactics. The lyrics are not bad, but they would have looked naked and skinny by themselves, not revolutionary. Most of the Beatles' message of dissent, and most of the profit has been in their music, not their words. The problem of the book was to find something to accompany a lyric on a page, something equivalent to Beatle noise – a problem handsomely solved with pictures, hundreds of wild, sexy, psychedelic, *noisy* pictures.

Half the new artists of the now world were harnessed to the job, and the result is extremely now. The editor, Alan Aldridge, is himself a clever young now dropout with appropriately long hair, and he describes his occupation with a phrase that covers the book itself: graphic entertainment. In graphic entertainment as in music the Beatles obviously let whatever's going influence them, but as with music they will doubtless in turn encourage more of the same. The book, priced low for so much genuine nekkid art, will sell like hotcakes and breed dozens of publishing imitations, some perhaps even using Dante, or Shakespeare's sonnets. (Think! the Dark Lady! I shdnt have mentioned it.)

What is impressive about the *lyric* entertainment in the book is how simple and sentimental and corny most of it is without the accompanying dissonance. Those who take deep soundings into the meanings of Beatle words should pay more attention instead to the meaning of musical bronx cheers – which are where the big Beatle profundity lies. A few lyrics have innuendoes about drugs and sex, and a few are openly porn, notably "Why don't we do it in the road"; but mostly they are straightforward love songs out of the twenties. Tin Pan Alley had its innuendoes too, but people just laughed at them. Now in our age of revolution we are asked, by editor Aldridge among others, to revel in ambiguities and hidden meanings. The revel is simply not there; it is in a bright and mildly tricky verbal surface enforced by, of all things, rhyme and rhythm:

Michelle ma belle
Those are words that go together
well.

And:

It feels so right now, hold me tight,
Tell me I'm the only one,
And then I might
Never be the lonely one.

Those are deep like Irving Berlin. Ah, but Aldridge would have me look in the *deep* songs such as those in the Sgt. Pepper album, where there are deepnesses about going on trips and even a bit of Liverpool phallic. Yes, and there is surrealism too, as in lines like "keeping her face in a jar by the door" (stupidly I thought that described a woman and her make-up). I have looked at these now, and I still think the lyrics are simple (I refuse to play them backwards). What impresses me is that the Beatles themselves keep saying they are simple. Their very first

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song, composed by John and Paul together, remains the model for at least a third of the poems. It begins, undeeply but pleasantly, with a clever little syntactical arrangement, its only distinguishing feature aside from the fourth line's "who-ho":

Love, love me do,
You know I love you.
I'll always be true
so please love me do, who ho love me do.

Another third of the poems is like the first third except that a good deal more is made of the "who ho" motif. I mean that this second third clearly deviates from the simple Romantic Love they began with, by jazzing the romance up. Nothing unusual here. Tin Pan Alley moved readily from elementary corn to corny wit like, "Strictly between us/ You're cuter than Venus/ And what's more you've got arms." Beatle wit, in the jazz tradition, is more forcefully a part of the music and the performance than the words; it's in the head wagging and the gestures and the klaxon-like sounds where there should be sweet violins – an early model would be Fats Domino singing "Blueberry Hill." Yet with the Beatles the dissonance will clearly be present on the page, as not in "Blueberry Hill." The following sour lyric, for example, would seem to be a sort of parody of romantic songs in which the girl is going away and the boy is heartbroken:

Do what you want to do,
And go where you're going to,
think for yourself,
'cos I won't be there with you.

In songs like this the Beatles are in effect playing dropout from jukebox Romantic Love. They are playing tough with it. They are little boys throwing snowballs at a stovepipe hat. And yet they constantly pay their respects to it by keeping the "I love you's" and the simple rhymes and rhythms as a base.

The third third is of course the deep third, containing numbers with exotic imagery from the land of the lotos eaters, and a few ironic monologues or dialogues in which they play the parts of unpleasant bourgeois people ("Revolution," "Try To See It My Way," and "She's Leaving Home"). These songs are more than tricky. I respect them. Perhaps I cheat them by underplaying them and emphasizing the other two-thirds of the Beatle repertoire. The Beatles, I feel, can afford to be cheated. Anyway it was the deep-rooted conventionality of the first two-thirds of the selection that most impressed me. I was oddly taken back in my own mind, as I read these lyrics, to the old Orson Welles movie *Citizen Kane*, in which the mystery of the rich old man's last death-bed word, "Rosebud," as well as the mystery of what had made him tick all his life, is laboriously sustained to the very dramatic end when the flames of Kane's great house burning finally consume a small sled up in the attic. On the sled is the word "Rosebud."

Tin Pan Alley is the Beatles' rosebud, and a convincing rosebud it is for four young capitalists selling 225 million records and saving the British pound. But what should be the rosebud for four of the world's leading dissenters? Neither honest art nor thoroughgoing dissent has ever accommodated itself well to money and middle-class opportunism. The Beatles have ringed their art with layer upon layer of dissonance, but in the still heart of the lyrics the deep truth is revealed. Hell of a way to run a revolution.

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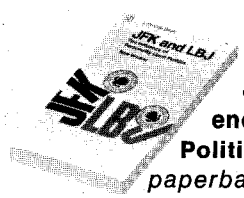

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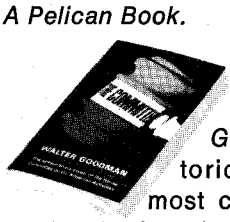

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Barbara Raskin: Uncle Tom's Creator

The Novels of Harriet Beecher Stowe by Alice Crozier

(Oxford; $6.50)

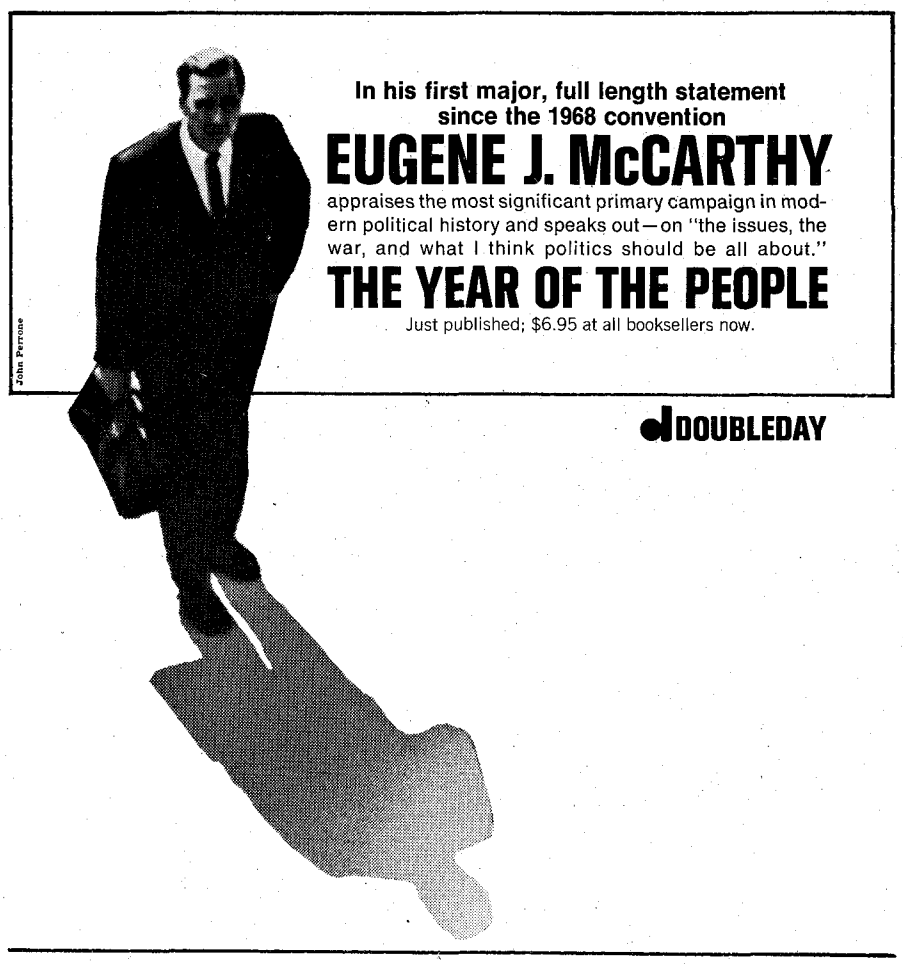
Mrs. Crozier's study of the literary works of Harriet Beecher Stowe is a readable and scholarly book. It treats the novels and journalistic pieces Mrs. Stowe produced, the social and political impact of the works, and the intellectual and literary influences upon them; but basically it is the story of a great lady – "American's first female journalist" – and of her pertinacity in trying to keep America straight.

Mrs. Stowe's militant stand against slavery stemmed from a strong belief in the principles of the Declaration of Independence, and a conviction that a return to Christian morality would rehabilitate the nation. She felt that the nation could "redeem its destiny only by giving up Daniel Webster's brutal compromise in favor of another kind of Union, a more perfect union, bound together by Christian love." She therefore attacked the compromisers, and the protectors of slavery, together with their deceptive libertarian rhetoric. She ridiculed Webster, for example, for using the language of liberty and idealism while selling out the ideals of the society. Her objective in *Uncle Tom's Cabin* was "that of setting down, in an almost encyclopedic spirit, the institution of American slavery in order to move the nation to recognize, and therefore purge, the corruptions slavery has engendered in the national life."

Now an issue like political rhetoric is certainly current and provocative. Yet Mrs. Crozier shies away from an analysis of the rhetoric and simply describes Mrs. Stowe's outrage. The currency vanishes. She had a greater obligation to Mrs. Stowe than simply to assert that this rather conventional mother of seven children redirected the history of her nation. She is much too stingy probing the unexpected intelligence and energy of her subject.

Perhaps this failure stems from the author's sense of priorities. Because Mrs. Crozier's research was consummately broad, she decided to tell *all* about Mrs. Stowe's entire opus, rather than concentrate on what was obviously monumental. She deals only briefly, for example, with history's reversal of the character of Uncle Tom from a sympathetic, indeed heroic, Negro slave into the epitome of a contemporary cop-out. What is amazing to the modern reader is how the original character could have been accused by Lincoln of starting the civil war. To believe Mrs. Crozier is to believe that the character was effective largely for literary reasons. She discusses at length the genre of the historical romance (à la Scott) and Mrs. Stowe's use of verisimilitude to anchor highly romantic materials and to establish credibility for emotional and imaginative scenes. She describes the devices Mrs. Stowe employed to charge and rev up her material, and she discusses characterization, dialogue, dialect, rhetoric, atmosphere and scene. All this is fine but inadequate as explanation of the social and pyschological conditions that made Uncle Tom a revolutionary.

After dealing with Uncle Tom, Mrs. Crozier provides a formalistic description of Stowe's New England novels and miscellaneous journalism. In order to handle all of the material she considers academically important, she has to synopsize dead and trivial stories and novels that even the most diligent English majors have never read. It gets a bit sticky after a while. There are also mind-bending analyses of Mrs. Stowe's religious changes or, more precisely, her gentle swayings between various forms of Christian faith. These include nice but obscure discriminations between Edward's brand of Calvinism and others'. Less boring but still academic are her catalogues of Mrs. Stowe's journalistic articles about domestic matters and what would now be called feminine lifestyles. Perhaps it is revealing and reassuring for the non-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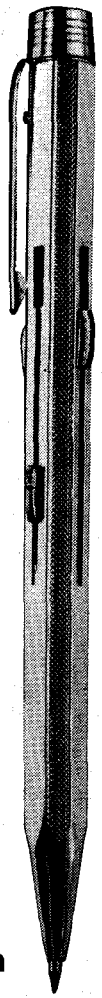

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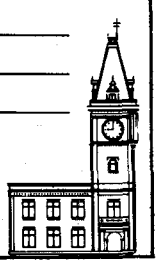

scholar to see the disparate concerns a brilliant female can have both for politics and repotting plants, yet the reader feels an imbalance between the important and trivial. As in the case of too many other contemporary biographies, the knowledge and talents of the literary critic have been dissipated by an arbitrary commitment to completeness. Mrs. Crozier treated everything but left the most pertinent, provocative, and interesting ideas unfathomed.

For all this, America's new Women's Liberation Movement has a new and respectably weighty book to read about an admirable early heroine.

William B. Ober: The Loss of Spontaneity

Serious Music—And All That Jazz
by Henry Pleasants

(Simon and Schuster; $5.95)

Music In A New Found Land
by Wilfrid Mellers

(Alfred A. Knopf; $6.95)

Henry Pleasants, trained as a professional musician, later a reviewer for newspapers as well as a contributor of articles to music journals for 35 years, continues his argument begun in *The Agony of Modern Music* (1955) and *Death of a Music?* (1961). Following the *ars nova* of the 14th century and the *secunda practica* of the early 17th century (i.e. the birth of diatonic music), musical idiom has been dominated successively by nationalistic or ethnically oriented schools – Italian in the late 17th and 18th century, Austro-Bohemian (classical) in the late 18th, and German in the 19th. After 1918, musical idioms became as fragmented as the society they reflected, as did visual and literary art forms. From the multiplicity of available idioms after World War II, Pleasants argues, the Afro-American idiom has become dominant. This emphasis took the *cognoscenti* by surprise and embarrassed professional critics not only because it came from proletarian sources and was an alien voice from an unexplored continent, but because it was created by musicians who could not even read conventional notation.

Writing as a scholar-journalist, Pleasants has a knack for exposing the sensitive nerve and aiming directly at the point of controversy. Properly concerned with the alienation of the "serious" composer from his audience, dismayed by declining attendance in the concert hall and opera house, he points out the semantic fallacy in the artificial distinction between "serious" and "popular" music. He attributes much of the failure of contemporary orchestral and chamber music to attract more than a limited audience to the heritage of the Schoenberg-Berg-Webern school and has no kind words to say about such entrenched names in the contemporary establishment as Boulez, Stockhausen, and Henze. Chagrined by the decline in current singing technique, he attributes much of it to the inability of current composers to write melodically for the human voice, Benjamin Britten being a notable exception. Pointedly, he demonstrates that *avant-garde* music, especially the electronic-aleatory school, has entered a world of *sound* which is not music, but he generously refrains from inquiring where this Aristotelian dichotomy leads, i.e. what the listener should listen for, if at all.

Pleasants' argument reminds me of

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the fine book by Wilfrid Mellers, *Music in a New Found Land*, published three years ago. Professor Mellers, a distinguished British scholar writing a history of American music, devoted the last half of his book to jazz, pop and their sequelae, and left the reader thoroughly convinced of his faith in the values of these popular forms.

Mellers and Pleasants agree that much of contemporary music has lost spontaneity. Mr. Pleasants goes one step further, pointing out the inability of singers and instrumentalists trained in conservatories to improvise, a skill essential to any jazz or pop musician, as it was in the days of Bach, Mozart, and Beethoven. Pleasants' argument that the fundamental impulse in jazz and pop is derived from Afro-American rhythms is convincing, and it is from this ethnic source that spontaneity and improvisation take root. He points out that the jazz idiom became decadent when "bop" replaced swing and jazz, denying the Afro-American emphasis on tunefulness and dance rhythm, leading to the current esoteric schools in which the players stop using their instruments as human voices.

Mellers was not willing to go so far as Pleasants in asserting the new Afro-American ascendancy. He was not willing, it would seem, to accept the idea that a music derived from an alienated, persecuted black minority has areas of universal application to the musical needs of all people. On the other hand he conceded that each of us is to some extent an alienated, persecuted individual, each man his own island, and that the exuberant spontaneity of jazz at its best is a welcome experience for almost everyone in some context.

For Mellers, Bartók and Stravinsky (the two 20th century composers Pleasants castigates least) and even Schoenberg and Webern have values not negated by jazz. As an academician in good standing, he clearly finds special values in music that today appeals only to a specially instructed audience, values Pleasants would apparently deny.

Both writers fail to solve completely the question of the lyric theatre. Pleasants deplores the decline of opera and operas written for singers. Mellers, while willing to deplore, pointed out with some justification that the music theater and opera house depend in large measure on the social and economic forces prevalent in a given period. There is no doubt that American

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musical comedy and grand opera, though descended from a common ancestor, are cousins, each remote from the other, each with different aims. Perhaps the time is not yet ripe for a jazz or jazz-derived opera, *pace* the partial success of *Porgy and Bess* in 1935. But such operas as Berg's Wozzeck (1925), Puccini's *Turandot* (1923-26), and Strauss's *Die aegyptische Helena* (1924-27) and his *Arabella* (1930-32), each quite different in idiom and intent, all date from the same period. We must hold *sub judice* the question of whether an effective opera can be written on the improvised, Afro-American idiom until such an opera is attempted and mounted with full professional forces.

Pleasants sounds a bit like Cassandra when he observes that progressive jazz shares certain unattractive features with the concert hall music of today's *avant garde*. Elsewhere, however, he asserts that the mid-20th century is the most exciting period since the 17th. Mellers shared this sense of excitement, and was particularly encouraged by the new fusions of idioms and genres.

The books, though three years apart and serving different purposes, complement each other. They are both well written and well documented, both deserving of study. As for their prophetic value, "The future remains a virgin who must be tried again."

Modernism So Far Is But Peanuts

(a critical rhapsody, suggested by reading Harold Rosenberg's eloquent and admirably documented pages, ARTWORKS AND PACKAGES*)*

abstract expressionism, neo-primitivism, cubism, futurism, constructivism, suprematism, the "post-vanguard" of minimalism (equals primary structures, systemic painting, reductive art, rejective art), the Dadaist "subversion of art,"

happenings, assemblages (agglomerates) combinations of machine parts, sponge sculptures, "kinetic sculpture," the "melding of painting and sculpture," sculptures built "out of the beams of wrecked buildings," "wall decorations and free-standing solids,"

junk salvagers, plastic bubbles, "new borderline researches in optics," "one-color aesthetics," bath fixtures sewn together "out of cloth,"

"Pollock's defiant paint-throwing," the converting of art galleries "into hallucinatory environments or science pavilions," "high intensity light beams, prismatic distortions, color suffusions, film projections, sound effects," canvases burned, gashed, written on, with objects pasted into them, Mona Lisa with a mustache,

everywhere goaded by "the nervous scrutinizing of trends and possibilities," art's "struggle for existence against the two great powers of contemporary society, technology and the mass media."

Elsewhere we are told, "in general, the spirit of engineering prevails among the younger 'object' artists."

Where then next? Art, where art thou? Beyond action painting, pop, op, the living theater, *Romeo and Juliet* nude, Engineers, awake and guide us farther:

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will the Great Change
begin

Not until the Clark Gables and Marilyn Monroes of that time
there on the broadcasting screen-bed
reach warmly and cuddlingly

into the pants or panties of every contactee
and get as it were reached into
from out of thousands of homes at once

not until then can we lay aside our texts
and go at it in earnest
into the New Age

KENNETH BURKE

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Correspondence

Replies to Ralph Nader

Sirs:

Though there is much in what Ralph Nader says (October 11) in his "Law Schools and Law Firms" with which I agree, the tone of his article obscures what he at least implies concerning legal education today (as opposed to legal education in the past). It may not come clear to the casual reader that there has been (by his own standards) a great change for the better. As a matter of fact, not even in the past has legal education at Harvard or elsewhere been principally designed to produce lawyers for "the large corporate law firms of New York and Washington." The objective has always been to teach the basic conceptions and methods of our legal system: Torts, Contracts, Criminal Law, Property, Corporations, Taxation, Constitutional Law, Procedure. It has been thought – and it is still thought even, for example, by "activist" black lawyers – that unless a lawyer understands the basics of the legal system he will not be able effectively to represent his clients be he legislator, administrator, Wall Street or ghetto lawyer, be the client poor, a black cooperative or a corporation. This was the training for example, of Landis, Cohen, Corcoran and the many others who drafted the great social legislation of the New Deal. It suggests to me that the old model of legal education has been a good deal more adaptable to all kinds of legal jobs than Mr. Nader is prepared to admit. Or, perhaps – *pace* the law professors – the lawyer's performance, whatever his legal education is a function of his intelligence and his social motivation. What better example than Ralph Nader!

It is true, however, that some two or three decades ago the old curriculum was "enriched" by offerings specially adapted to corporate practice. These courses are still offered but in the last fifteen years there has been a movement growing each year in breadth and intensity away from the immediate concerns of traditional practice. It has taken a great variety of forms and produced a multitude of courses, many of them experimental, reflecting the enormous variety of modern legal interests. The point can be made concrete by illustrations from the current Harvard Law School Catalogue. For example: Law In a Changing Society, Law and Social Research, Legal and Moral Responsibility, Legal Process and Technological Change, Economics for Lawyers, The Sociology of the Law, Mental Abnormality and the Law, The Prediction and Prevention of Harmful Conduct, The Provision of Legal Services, Public Welfare Law, Psychoanalytic Theory and Legal Assumptions, Soviet, Chinese and Western Approaches to International Law, Metropolitan Transportation and the Mobility of the Poor, Workshop in Urban Problems, Application of Traditional Corporate Techniques to Economic Development in Depressed Urban Areas. Two courses in Environmental Problems offered last year have been dropped for a time because of the retirement of Professor Cavers but an extra-curricular student group, of which I am the faculty advisor, will study environmental problems. In sum, of a hundred courses, more or less, offered in the Harvard Law School in the second and third year, at least half of them are of the character of those noted above and many of the remaining fifty (e.g., Evidence, Trial Practice) are of potential use to most all prospective practioners whatever their ultimate destination.

One further point. I agree with Mr. Nader that a disproportionate amount of legal talent has been devoted to corporate practice and the management of wealth. This as he says is changing. Government, the law schools, private foundations – and the law firms themselves – are making it possible for lawyers to be employed to represent those who have until now been unrepresented. Citizen groups, pooling their resources, are taking to the law and so providing work of a public character for lawyers. At the same time young lawyers are demanding work of this sort. The great majority of them, I believe, still look forward to affluence or reasonable comfort in their middle or later years, but there will be a contin-

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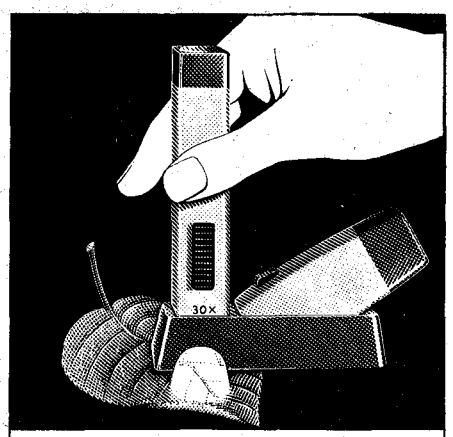

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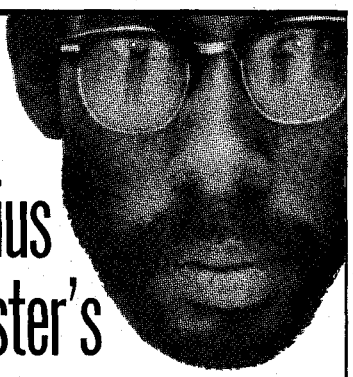

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ual supply of fresh young lawyers and the habit of public service hopefully will stay with them after they have settled down to more lucrative practices. But Nader's notion – if I read him correctly – that the representation of industry – and even government (?) – is "trivial or harmful" is, with respect, nonsense. All of us, management, rich, poor, and middle income, dividend recipients, pensioners, and labor unions, insurance companies, foundations, universities, government itself, draw our incomes from industry. Corporations with their managements or what-you-will are necessary components of industry and as such need legal counsel for their effective operation. Given the structure of our society the representation of such interests cannot be trivial. Indeed the extension of corporate practice is in part a response to the elaborate regulatory work-consuming requirements (e.g., the control of securities by the SEC) which industry must satisfy as a condition of doing business. Corporate activities may on occasion be harmful but so are the activities of some of those accused of crime. Yet, no one today would have the audacity to condemn the use of legal talent for the defense of persons accused of crime. Nader's devil theory, the game of the wicked corporations on the one side and the innocent, put-upon public on the other are self-deceptions. We are all making our contributions to the pollution of the atmosphere and we are all in need of legal counsel to protect us from ourselves.

Louis L. Jaffe
Cambridge, Mass.

Mr. Jaffe is Byrne Professor of Administrative Law at Harvard Law School.

Sirs:

Over the past few generations, the law schools admittedly have been preparing lawyers to help in the construction of our affluent, capitalistic society. Big business cannot grow and flourish without good legal services. Those who believe that a flourishing business community, and even big business is bad, will probably join Mr. Nader in blaming the law schools for contributing to it. Many people, however, believe that the success of our business community is an essential part of the American dream. That success rests on a foundation of legal structures, corporate charters, securities indentures, sales arrangements, patents, and procedures for minimization of taxes. If the law school courses "tracking the lucre and prevailing ethos" prepared the students to be the architects of these structures, they can only be criticized if creating the structures themselves was wrong. It is interesting to observe, however, that corrective measures, when indicated, are constructed by lawyers trained in those same law schools and under that same ethos.

Even assuming, however, that preparation for service to the business community has been emphasized in the law schools, why does Mr. Nader believe that the law schools have been doing nothing else? I wonder if he really knows what the law schools all over the country have been doing over the past couple of generations. I wonder where he thinks some of the great leaders in the recent battles for civil rights and law reform learned their lessons, if not at law schools. The tricks of tax, corporate, securities and property law could not have been all that Whitney North Seymour learned at Columbia to prepare him for his great career protecting the rights of the underprivileged. Does Mr. Nader know what Charles Rhyne was studying at Duke, Abe Fortas at Yale, and Thurman Arnold, Joseph Rauh, and Erwin Griswold at Mr. Nader's own Harvard, that led them into paths of contribution *pro bono publico* that everyone except Mr. Nader knows so well? Even Lloyd Cutler, one of the worst of the big bad lawyers in Mr. Nader's book, must have learned something at Yale that has caused him to do so much for the victims of persecution while helping General Motors to solve its special problems. Justices Holmes and Brandeis went to the Harvard Law School but even Mr. Nader seems to concede that its business-oriented curriculum did not blind their eyes to the "felt necessities of our times."

What Mr. Nader seems to fail to recognize is that the law schools have all along been preparing their graduates to cope with the greatest problems and issues of the day. When those problems

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and issues are focused more on the needs of the underprivileged than on the board rooms of big business, the lawyers' skills turn more in those new directions. Proof that the law schools have always been turning out people qualified for these services is the performance of those many lawyers who are now rendering services *pro bono publico*. Without holding any special brief for Harvard, I suggest that that venerable school and its companion schools did a pretty good job in preparing Mr. Nader and his raiders.

Michael H. Cardozo
Washington, D.C.

Those Effete Snobs

Sirs:

TRB, who is usually quite perceptive about the rhetoric of right-wing Neanderthals, should know that the word "effete," as they apply it to liberal intellectuals, is never intended to be taken in its denotative sense. It is invariably used connotatively, specifically as a euphemism for "homosexual."

If TRB has not already done so, I urge him to read what Richard Hofstadter has to say on this subject in *Anti-Intellectualism in American Life*. For example, at one point in his book Hofstadter recalls the campaign of 1952 when the New York *Daily News* employed Agnew-type rhetoric against Adlai Stevenson, charging that he "trilled" his speeches in a "fruity" voice. His voice and diction were said to remind one of "a genteel spinster who can never forget that she got an A in elocution at Miss Smith's Finishing School." In like manner, Stevenson's supporters were labeled "typical Harvard lace-cuff liberals," "lace-panty diplomats," "pompadoured lap dogs," who wailed in "perfumed anguish" at Senator Joseph McCarthy's charges.

Burling Lowrey
Washington, D.C.

Kauffmann, *from page 24*

tries to peddle trinkets and souvenirs to help keep the Indians alive, is there a touch of the performance that Keach might have given if the part had ever been written.

Kopit's play was first produced in London last year by the Royal Shakespeare Company. Earlier this year it was produced at the Arena Stage in Washington under Frankel's direction with Keach and some of the same actors. Now Broadway is taking *Indians* to its bosom as its Serious Play of the Year. (Last year it was *The Great White Hope*, an overpraised but much better play – also from the Arena.) I do not argue backward from Broadway's patronization that the Kopit play cannot be good. But to see even its good moments – the five or six replicas of Buffalo Bill dashing off to impersonate him on stages around the world, the stripping of masks from Bill's face as he recites betrayals of the Indians – to see them plunk to the ground without a work of current or rhythm or depth to bear them along is to understand Kopit's real failure. His play must become a crystallization of the unconscious, an externalization of the dark in us, or it is nothing. It must fulfill Jung's injunction to "dream the myth onwards and give it a modern dress," or it is only one more pretentious American self-flagellation.

Rupert Hart-Davis, the English publisher and editor, has refused to abide by Max Beerbohm's judgment on his own drama criticism. We are the gainers. Beerbohm selected about one-third of his critiques in the *Saturday Review* for his now-famous collection *Around Theatres*. Hart-Davis has collected the other pieces, hitherto not reprinted, in two volumes. *More Theatres* has just been published here. (Taplinger; $15.) *Last Theatres* is to follow next year.

Beerbohm remains the greatest English-speaking drama critic who didn't really care about the theater. (The breed has proliferated.) In sheerly theatrical terms, he had little vision and less concern, but he also had exquisitely idiosyncratic tastes and the social sensibility of an invisible, aristocratic imp – all these expressed in that purling, soothing-impertinent style.

Still his limitations, as limitations will do, gave him certain advantages. For instance, he perceived the importance of *The Importance of Being Earnest* when the best of English-speaking critics, Bernard Shaw, did not. And there are passages in this new collection that might have been written this year:

> When a man dramatises one of his own novels, his natural vanity prevents him from sacrificing the many things which have to be sacrificed if the play is to be a good one. Also, his natural vanity prevents him from believing that any audience can include any creature so degraded as not to have read his book. His play, therefore, is as likely to omit many essential things as it is to include many that are quite superfluous. The result is dreadful.

This seems to me a fair comment on Elliott Baker's dramatization of his own very good novel *The Penny Wars*, which recently opened and closed in the same week.

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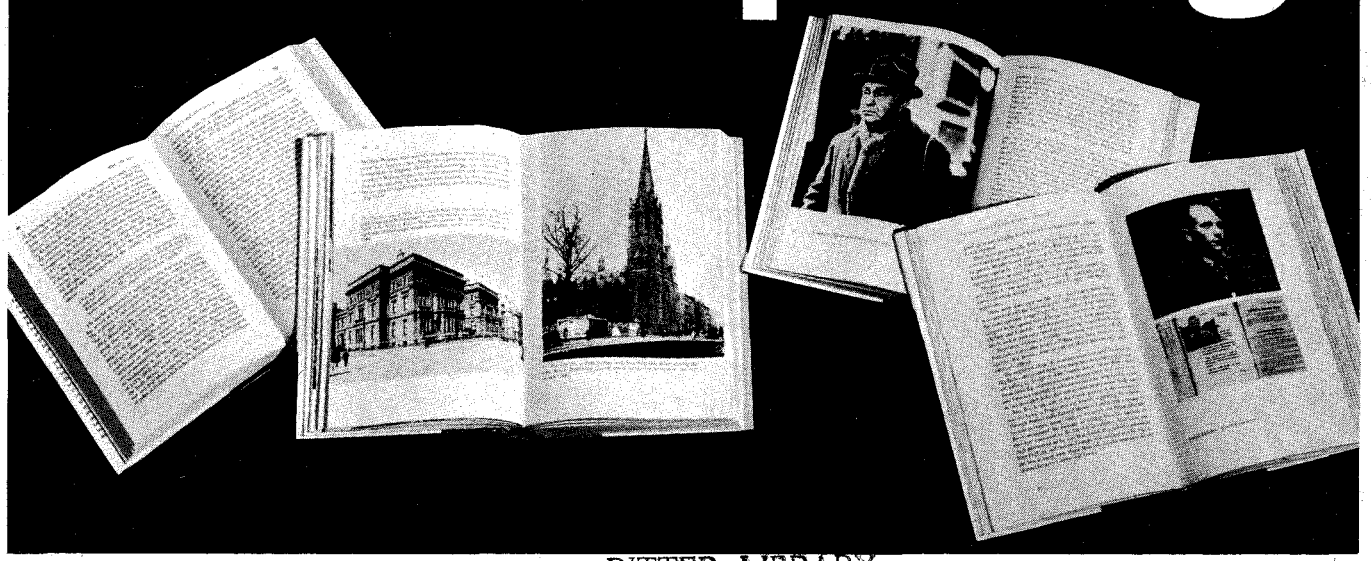

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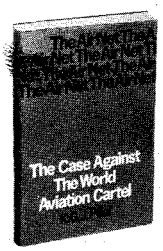

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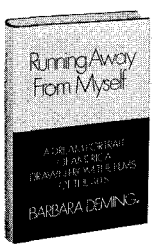

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